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सं. 46] नई दिल्ली, नवम्बर 10—नवम्बर 16, 2019, शनिवार/कार्तिक 19—कार्तिक 25, 1941
No. 46] NEW DELHI, NOVEMBER 10— NOVEMBER 16, 2019, SATURDAY/KARTIKA 19— KARTIKA—25, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 नवम्बर, 2019

का.आ.1956.—भारतीय जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतदद्वारा, श्री मुकेश कुमार गुप्ता, प्रबंध निदेशक, भारतीय जीवन बीमा निगम को तत्काल प्रभाव से उनकी अधिवर्षिता की तारीख (30.09.2021) तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम में सदस्य के रूप में नियुक्त करती है।

[फा. सं. ए-15011/01/2018-बीमा-I]

उमेश चन्द्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 1st November, 2019

S.O.1956.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation of India Act, 1956 (31 of 1956), the Central Government hereby appoints Sh. Mukesh Kumar Gupta, Managing Director, Life Insurance Corporation of India as member of the said Corporation, till the date of his superannuation (30.09.2021) or until further orders, whichever is earlier, with immediate effect.

[F. No. A-15011/01/2018-Ins.I]

UMESH CHANDRA, Under Secy.

नई दिल्ली, 1 नवम्बर, 2019

का.आ.1957.—भारतीय जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतदद्वारा, श्री राज कुमार, प्रबंध निदेशक, भारतीय जीवन बीमा निगम को तत्काल प्रभाव से उनकी अधिवर्षिता की तारीख (31.01.2022) तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम में सदस्य के रूप में नियुक्त करती है।

[फा. सं. ए-15011/01/2018-बीमा-I]

उमेश चन्द्र, अवर सचिव

New Delhi, the 1st November, 2019

S. O.1957 .—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation of India Act, 1956 (31of 1956), the Central Government hereby appoints Sh. Raj Kumar, Managing Director, Life Insurance Corporation of India as member of the said Corporation, till the date of his superannuation (31.01.2022) or until further orders, whichever is earlier, with immediate effect.

[F. No. A-15011/01/2018-Ins.I]

UMESH CHANDRA, Under Secy.

नई दिल्ली, 14 नवम्बर, 2019

का.आ.1958.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 3 की उप-धारा (2क) के दूसरे परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श के पश्चात् एतद्वारा, यूनियन बैंक आफ इंडिया की प्राधिकृत पूंजी को तीन हजार करोड़ रूपए से बढ़ाकर दस हजार करोड़ रूपए करती है।

[फा. सं. 11/8/2019-बीओए-I]

ए. के. घोष, अवर सचिव

New Delhi, the14th November, 2019

S.O.1958 .—In exercise of the powers conferred by the second proviso to sub-section (2A) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Central Government in consultation with the Reserve Bank of India, hereby increases the authorised capital of the Union Bank of India from three thousand crore rupees to ten thousand crore rupees.

[F. No. 11/8/2019-BOA-I]

A. K. GHOSH, Under Secy.

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 5 नवम्बर, 2019

का.आ.1959.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री विद्या सागर शुक्ला, अधिवक्ता को नियुक्ति की तारीख से तीन वर्ष तक या मामले के निपटान तक, इनमें से जो भी पूर्वत्तर हो, दिल्ली विशेष पुलिस स्थापना (केंद्रीय अन्वेषण ब्यूरो) के निमित्त विशेष न्यायाधीश, पटियाला हाऊस न्यायालय, नई दिल्ली में वाद सं. आरसी 2172015ए0002/एसीयू-V, नई दिल्ली (अंतरिक्ष–देवास मामला) में और उससे संबद्ध मामलों या उससे आनुषंगिक मामलों के विचारण का संचालन करने के लिए विशेष लोक अभियोजक नियुक्त करती है ।

[सं. 225/11/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 5th November, 2019

S.O.1959 .—In pursuance of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri. Vidya Sagar Shukla, Advocate as Special Public Prosecutor for conducting trial in case No. RC.2172015A0002/ACU-V, New Delhi (Antrix-Devas Case) in the Court of Special Judge, Patiala House Court, New Delhi on behalf of Delhi Special Police Establishment (CBI) and for matters connected therewith or incidental thereto for a period of three years from the date of appointment or disposal of the case whichever is earlier.

[F. No. 225/11/2019-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 11 नवम्बर, 2019

का.आ.1960.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अपराधों का भी अन्वेषण दिल्ली विशेष पुलिस स्थापना के सदस्यों द्वारा करने के लिए विनिर्दिष्ट करती है, नामतः—

(क) भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 305 ।

(ख) उपर्युक्त अपराधों के संबंध में अथवा उससे सम्बद्ध तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों में किए गए किसी दुष्प्रयास, दुष्प्रेरणा और षड्यंत्र ।

[फा. सं. 228/17/2019-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 11th November, 2019

S.O.1960 .—In exercise of the powers conferred by Section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specifies the following offences which are also to be investigated by members of the Delhi Special Police Establishment, namely :—

(a) Section 305 of the Indian Penal Code, 1860(Act No. 45 of 1860) ;

(b) Attempts, abetments, and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/17/2019 –AVD-II]

S. P. R. TRIPATHI, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 7 नवम्बर, 2019

का.आ.1961.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स थेरापीयूटिक्स केमिकल रिसर्च कार्पोरेशन, 151, मन्चेश्वर इंडस्ट्रियल इस्टेट, सैक्टर – ए, ज़ोन- बी, भुवनेश्वर – 751010, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए एतद्वारा अभिकरण (जिसे एतद्पश्चात उक्त अभिकरण कहा जायेगा), के रूप में मान्यता प्रदान करती है जो भारत सरकार के वाणिज्य मंत्रालय की भारत के राजपत्र, असाधारण भाग-II, खण्ड -3, उप खण्ड(ii), में प्रकाशित दिनांक 20 दिसम्बर, 1965 की अधिसूचना संख्या का.आ. 3975 में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I मैंगनीज डाइऑक्साइड को छोड़कर मैंगनीज अयस्क तथा लौह अयस्क के संबंध में उक्त खनिज एवं अयस्क का निर्यात से पूर्व निम्नलिखित शर्तों के अधीन पारादीप, धामरा तथा गोपालपुर पत्तन में निरीक्षण का कार्य करेगी, अर्थात् :

(i) उक्त अभिकरण, खनिज और अयस्क का निर्यात समूह । (निरीक्षण) नियम, 1965 के नियम 4 के अधीन विनिर्दिष्ट निरीक्षण करने के लिये उनके द्वारा अनुपालन की जा रही निरीक्षण की पद्धति की जाँच करने के लिए निर्यात निरीक्षण परिषद् द्वारा नामित अधिकारियों को पर्याप्त सुविधाएं देगा; और

(ii) उक्त अभिकरण, इस अधिसूचना में विनिर्दिष्ट अपने कार्यो के निष्पादन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होगा ।

[फा.सं. के-16014/7/2019-निर्यात निरीक्षण]

दिवाकर नाथ मिसरा, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 7th November, 2019

S.O.1961.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s Therapeutics Chemical Research Corporation, 151, Mancheswar Industrial Estate, Sector- A, Zone- B, Bhubaneswar - 751010, as an agency (hereinafter referred to as the said agency) for a period of three years from the date of publication of this notification in the official Gazette, for the inspection of Minerals and Ores – Group – I, namely, Manganese Ore excluding manganese dixoide and Iron Ore specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the Gazette of India , Extraordinary under part II, Section 3, Sub-Section (ii) *vide* number S.O. 3975 dated the 20th December, 1965, prior to export of the said Minerals and Ores at Paradip, Dhamra and Gopalpur Ports, subject to the following conditions, namely: —

(i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965; and

(ii) the said agency, in performance of its function as specified in this notification shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing from time to time.

[F. No. K-16014/7/2019 - Export Inspection]

DIWAKAR NATH MISRA, Jt. Secy.

नई दिल्ली, 7 नवम्बर, 2019

का.आ.1962.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स क्वालिटी सर्विसेज एंड सॉल्यूशंस (गोवा), हाउस स. 1576, सुकलभटवाडी, तालुका वेंगुरला, ज़िला - सिंधुदुर्ग, महाराष्ट्र - 416517, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की शासकीय राजपत्र भाग-II, खंण्ड-3, उप खंण्ड(ii), में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं॰ का.आ. 3975 के तहत प्रकाशित अधिसूचना मे उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात, लौह अयस्क, मैंगनीज अयस्क मैंगनीज डाइऑक्साइड छोड़कर तथा बॉक्साइट के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन रेडी तथा जाइगड़ पत्तन में उक्त खनिज और अयस्क का निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात्:—

(i) यह अभिकरण, खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण करने के लिए अनुपालन की जा रही निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा नामित अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यो के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगी।

[फा. सं. के-16014/6/2019-निर्यात निरीक्षण]

दिवाकर नाथ मिसरा, संयुक्त सचिव

New Delhi, the 7th November, 2019

S.O.1962 .—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s. Quality Services and Solutions (Goa), House No. 1576, Sukalbhatwadi, Taluka-Vegurla, District - Sindudurg, Maharashtra - 416517, as an agency for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores- Group I namely, Iron Ore, Manganese Ore excluding manganese dioxide and Bauxite, as specified in the Schedule to the notification number S.O. 3975, dated the 20th December, 1965, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20th December, 1965, prior to export of the said Minerals and Ores at Redi Port and Jaigad Port, subject to the following conditions, namely: —

(i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965; and

(ii) the said agency shall, in performance of its function under this notification shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing from time to time.

[F. No. K-16014/6/2019 - Export Inspection]

DIWAKAR NATH MISRA, Jt. Secy.

जल शक्ति मंत्रालय

(जल संसाधन, नदी विकास और गंगा संरक्षण विभाग)

नई दिल्ली, 30 अक्तूबर, 2019

का.आ.1963.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, केन्द्रीय जल आयोग, नई दिल्ली के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करती है:—

1. जल विज्ञानीय प्रेक्षण परिमंडल, केन्द्रीय जल आयोग, वैशाली।
2. प्रबोधन और मूल्यांकन (आ.प्र.) निदेशालय, हैदराबाद।
3. निचली गोदावरी उपमंडल-I, केन्द्रीय जल आयोग, भद्राचलम।
4. मुख्य अभियंता कार्यालय, तीस्ता बेसिन संगठन, केन्द्रीय जल आयोग, कोलकाता।
5. प्रबोधन और मूल्यांकन निदेशालय, केन्द्रीय जल आयोग, कोलकाता।
6. उप मण्डल, अभियंता कार्यालय, मंजीरा उपमंडल, केन्द्रीय जल आयोग, निजामाबाद (तेलंगाना)।

नर्मदा बेसिन संगठन के अधीनस्थ कार्यालय:

1. निदेशक, प्रबोधन निदेशालय, नर्मदा बेसिन संगठन, केन्द्रीय जल आयोग, भोपाल।
2. निदेशक, प्रबोधन एवं मूल्यांकन निदेशालय, नर्मदा बेसिन संगठन, केन्द्रीय जल आयोग, भोपाल।
3. निदेशक, पुनासा निदेशालय, नर्मदा बेसिन संगठन, केन्द्रीय जल आयोग, भोपाल।
4. अनुभागीय अभियंता, ऊपरी नर्मदा उपमंडल, क्रमांक-I, केन्द्रीय जल आयोग, होशंगाबाद।
5. सहायक अधिशासी अभियंता, मध्य नर्मदा उपमंडल क्रं.-2, केन्द्रीय जल आयोग, भोपाल।
6. सहायक अधिशासी अभियंता, मध्य नर्मदा उपमंडल क्रं.-3, केन्द्रीय जल आयोग, इंदौर।
7. अनुभागीय अभियंता, ऊपरी नर्मदा उपमंडल, केन्द्रीय जल आयोग, जबलपुर।

सिंधु बेसिन संगठन का कार्यालय:

1. प्रबोधन एवं मूल्यांकन निदेशालय, शिमला।

[सं. ई.-11011/16/2015-हिन्दी]

कमखेंथंग गुइते, आर्थिक सलाहकार एवं राजभाषा प्रभारी

MINISTRY OF JAL SHAKTI

(Department of Water Resources, River Development and Ganga Rejuvenation)

New Delhi, the 30th October, 2019

S.O.1963 .—In Pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following offices of Central Water Commission, New Delhi, wherein more than 80% staff have acquired the working knowledge of Hindi:

1. Hydrological Observation Circle, Central Water Commission, Vaishali.
2. Directorate of Monitoring and Appraisal (AP), Hyderabad.
3. Lower Godavari Sub-Division-I, Central Water Commission, Bhadrachalam.
4. Office of the Chief Engineer, Teesta Basin Organization, Central Water Commission, Kolkata.
5. Directorate of Monitoring and Appraisal, Central Water Commission, KolKata.
6. Sub Division, Engineer Office, Manjira Sub Division, Central Water Commission, Nizamabad (Telangana).

Subordinate Offices of Narmada Basin Organization

1. Director, Directorate of Monitoring, Narmada Basin Organization, Central Water Commission, Bhopal.
2. Director, Directorate of Monitoring and Evaluation, Narmada Basin Organization, Central Water Commission, Bhopal.
3. Director, Punasa Directorate, Narmada Basin Organization, Central Water Commission, Bhopal.
4. Sectional Engineer, Upper Narmada Sub-Division, Sr. No.-I, Central Water Commission, Hoshangabad.
5. Assistant Executive Engineer, Central Narmada Sub Narmada Sub-Division No.-2, Central Water Commission, Bhopal.
6. Assistant Executive Engineer, Central Narmada Sub Narmada Sub-Division No. 3, Central Water Commission, Indore.
7. Sectional Engineer, Upper Narmada Sub-division, Central Water Commission, Jabalpur.

Office of the Indus Basin Organization:

1. Directorate of Monitoring and Evaluation, Shimla.

[No. E-11011/16/2015-Hindi]

KAMKHENTHANG GUITE, Economic Advisor & Official Language Incharge

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श्रम और रोजगार मंत्रालय

नई दिल्ली, 6 नवम्बर, 2019

का.आ.1964.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 71/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.11.2019 प्राप्त हुआ था।

[सं. एल.–12025/01/2019–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 6th November, 2019

S.O.1964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.11.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 30th day of October, 2018

INDUSTRIAL DISPUTE L.C.No. 71/2018

Between:

Sri Kondru Raju,
S/o K. Bikshapathi,
H. No. 3-102, Bikshapathi House Street Road Lane, BJR Nagar Colony,
Ibrahimpatnam –501506. …Petitioner

AND

1. The Chief General Manager,
   State Bank of India (Erstwhile SBH),
   Administrative Office at Koti, Bank Street,
   Hyderabad . Telengana Circle.

2. The Branch Manager,
   State Bank of India (Erstwhile SBH)
   Ibrahimpatnam Branch (20090)
   Ibrahimpatnam, Ranga Reddy District. …Respondents

Appearances:

For the Petitioner : M. Kiran Kumar & N N Murthy, Advocates

For the Respondent : Sri Y. Ranjeet Reddy, Advocate

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of State Bank of India and their workman Sri Kondru Raju and numbered in this Court as L.C. No. 71/2018 and notices were issued to the parties concerned.

2. Sri Kondru Raju raised dispute against the order of dismissal vide order dated 28.4.2017 by the Respondents. He prayed this Court to set aside the order dated 28.4.2017 and direct the Respondents to reinstate the Petitioner into service with full back wages and all other attendant benefits.

3. The case is posted for filing of counter statement by the Respondents.

4. At this stage, the Petitioner along with his Advocate filed one memo intimating the court to permit him to withdraw his case. Copy of the memo has already been served on the counsel for the Respondents who has raised no objection for withdrawal of the case. Being asked by this Tribunal the Petitioner submitted that the matter has been settled outside the court. After withdrawal of the case he will be engaged under the Respondents' management.

5. Since the Petitioner wants to withdraw the case, the matter has already been settled and he has no claim to raise against the Respondents, this Tribunal has no hesitation to accept his memo. Thus, the memo is accepted and as such, the case is closed as withdrawn.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 30th day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 6 नवम्बर, 2019

का.आ.1965.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 31/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.11.2019 को प्राप्त हुआ था।

[सं. एल–41011/40/99–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th November, 2019

S.O.1965.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2000*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. II* , New Delhi as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 06.11.2019.

[No. L-41011/40/99–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 31/2000

Date of Passing Award- 9th September, 2019

Between:

Shri Ram Lal,
S/o Shri Komal and 2 others
Through- The President, Delhi Labour Union
Aggarwal Bhawan, G.T Road, Tis Hazari,
New Delhi- 110054. … Workmen

Versus

The General Manager,
Northern Railway,
Baroda House, New Delhi- 110001.

…Management

Appearances:-

Shri Rajiv Aggarwal (A/R) …For the Workmen.

Shri Vidur Sikka (A/R) …For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Northern Railway, New Delhi, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-41011/40/99 IR(B-I) dated 17.02.2000 to this tribunal for adjudication to the following effect.

> "Whether the workmen Shri Ram Lal, Babu Lal, and Hari engaged as casual workers at Railway's Karnail Singh stadium by Northern Railways Sports Association are entitled for temporary status under Railway Estt. after completion of 120 days continuous working."

The dispute was earlier adjudicated and on 01.06.2005 award was passed denying the claim of the workmen. The said award being challenged by the workmen, the Hon'ble High Court of Delhi in judgment dated 08.02.2019 passed in WPC No. 9001/2006, and 1269/2006 (heard and decided together) while setting aside the award, remanded for fresh adjudication.

Workmen have claimed that Babulal was engaged as a peon in Northern Railway on 01.05.1990 with initial monthly salary of Rs. 1900/-. Similarly claimant workman Ram Lal was engaged as a Gym Attendant on 01.08.1994 with an initial monthly salary of Rs. 1600/- and workman Shri Hari was engaged as a Safaikaramchari on 01.07.1995 on initial monthly salary of Rs. 1650/-. Though their place of work was at Karnal Singh stadium of Northern Railway and they were discharging the duties as directed by the authorities engaged there, in fact they are the employees of Northern Railway and treated as monthly paid Muster Roll workers. Their engagement was continuous and the duty performed by them was permanent in nature. They were pertaining to the utmost satisfaction of the employer. However, they were being discriminated with regard to their wage and other benefits in comparison to their regular counter parts. The workmen were ventilating their grievances to the authorities of Northern Railway demanding conferment of temporary status, proper pay scale allowances leave and other benefits from the initial date of joining since they have worked continuously for 120 days and more.

But the authorities never considered the grievances of these workmen. On the contrary, in gross violation of the provisions of law again discriminated the workmen by regularizing the service of one Kayam Ullah S/o Shri Kayam Ullah on 01.08.93 standing in the same footing, with these workmen. Several representations submitted by the workmen to Railway Authorities, were never considered.

Finding no other efficacious remedy, alleging unfair labour practice, they served demand notice on the General Manager, Northern Railway on 28.04.99 by Registered Post with A/D. Though, the notice was duly received in the office of the General Manager, no reply was received by the workmen. Thereafter an industrial dispute was raised by them before the Labour Commissioner, being properly espoused through union where a conciliation proceeding was initiated. But for the non cooperation of the Northern Railway Management, Conciliation failed, and the appropriate government referred the dispute to this tribunal for adjudication.

Respondent Northern Railway filed WS denying the stand taken by the claimant and praying for dismissal of their claim. The sole objection taken by the respondent/management is that the workmen of this proceeding were never selected and appointed by Northern Railway. While admitting the employment of these workmen with Northern Railway Sports Association (NRSA) took a specific stand that, the Association aims at promoting sports activities of the employees of Northern Railway. The office bearers of Association, who are the employees of Northern Railway hold honorary posts and the persons engaged by the Association for maintenance of the stadium and to assist other activities are paid by the Association from the grant received from staff Benefit fund. There are no permanent or temporary posts at stadium level. The part time workers engaged by NRSA can't be treated to be on the pay roll or Northern Railway and no temporary or permanent status can be conferred on them as claimed.

Be it mentioned here that during the pendency of this proceeding the workmen filed an application u/s 33A of the ID Act 1947 alleging that the management on a vindicated action having knowledge about the pending proceeding

terminated their service w.e.f 08.07.2019 without following the mandates of industrial Law. Citing the judgment of the **Hon'ble Supreme Court of India in the case of Jaipur zila Sahakari Bhoomi Vikas Bank Limited vs. Ram Gopal Sharma and others** the workmen took a stand that the illegal termination in contravention of law laid down is nonest and the management be directed to reinstate them in service with immediate effect. The management replied in writing that the termination was made according to the policy decisions of the Railway Board as the work done by the workmen earlier has been outsourced by due tendering process. This aspect of the dispute is required to be adjudicated in this proceeding too. Thus, on the basis of the pleading of the parties the points which need to be adjudicated are as follows.

1. Whether the workmen are entitled to temporary status under Railway establishment as claimed by them.

2. Whether their termination during pendency of the dispute is illegal and to what relief the workmen are entitled to.

On behalf of the claimants the workman Ram lal, Babu lal, and Hari lal testified as WW1, WW2, WW3 respectively. They placed on record certain documents which have been marked in a series of WW1/1 to WW1/17. These documents are the I-cards issued to the workmen by NRSA, the representations made by the workmen to different authorities of Railway administration, the representation made to the local peoples representative forwarded to Railway Board and to the Sport Officer NRSA to consider regularization of the service of the claimants, another document which was a proposal initiated for regularization of casual workers the claim statement filed by the claimants through the union before the General Manager Northern Railway and Labour Commissioner. On behalf of the management one witness named Shri Randhir Singh working as Sport Officer and Administrator Karnal Singh Stadium was examined as MW1. This witness did not produce any document but was cross examined at length on behalf of the claimant/workman.

FINDINGS

POINT No. 1

In the claim statement and by adducing oral evidence the claimants have asserted that they were working continuously in their respective post since the year 1990, 1994, 1995 as the case may be. The work discharged by them was permanent in nature and during the course of employment at no point of time dissatisfaction was ever expressed by the management. But for the discrimination shown to them with regard to their salary and other service conditions they were always raising objection. They have further stated that the management also exhibited hostile discrimination by regularizing the service of one Kayam Ullah in proper Pay scale and transferred him to Calcutta. Though Kayam Ullah was standing in the same footing with the claimants their candidature was not considered inspite of request. The witnesses have also stated that for having completed 120 days of continuous employment with the management, they are entitled to be treated as temporary employees from the initial date of their joining which is a policy decision of Railway Administration. Denial of the same amounts to unfair labour practice since the said decision has affected the service condition and the legal rights of the claimant/workman to a larger extent. The witnesses also stated in their sworn testimony that several representations were made to the General Manager Indian Railway and other authorities. One of the representations made to the President of Congress Seva Dal U.P was referred to the General Manager India Railway which was forwarded to the Sports Officer and Administrator of the Karnal Singh Stadium for taking action in that regard. Though the concerned officer had put a note furnishing the list of 8 such employees including the present 3 claimants recommending conferment of temporary status to them and to enable them to become railway employees on account of the fact that they have completed more than 120 days of continuous service, the management in utter disrespect of law, regularized the service of only one person i.e Kayam Ullah Gym Attendant ignoring the candidature of the present claimants. Even the seniority of claimant Babulal was ignored at that time. The document in this regard has been placed on record as exhibit WW1/9.

The management while filing the WS had stated that Kayam Ullah was previously working for NSRA and later on he resigned and left. The witness examined on behalf of the management as MW1 Shri Randhir Singh also maintained to say that nothing is known to him about Kayam Ullah. But there is no denial either in WS or by management witness to the statement of the claimants that Kayam Ullah's service was regularized ignoring the claimants.

The document marked as WW1/9 i.e. the internal office note of the management which has been admitted by MW1 and the oral evidence of MW1 lead to show that the Railway administration has a policy to regularize the service of casual workers who completed 120 days of continuous work. In the present case the evidence on record proves that these workmen had not completed 120 days of continues work making them eligible to be treated as temporary employees of the management. The evidence is also clear to the extent that official steps were taken for treating them as temporary employees but that was left half way for reasons best known to the management. From the oral evidence of the claimants which has not be rebutted by the management it is also proved that one of the casual workers Kayam Ullah was conferred temporary status and taken on regular pay scale whereas the claimants were discriminated.

Thus, it is now to be seen if the denial on the part of the management to regularised the service of the workman and treating them with hostile discrimination amounts to unfair labour practice. "Unfair labour practice" as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employ workman as Badlis, casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workman amounts to unfair labour practice. Not only that to show favouritism to one worker regardless of merit has also been defined as unfair labour practice. But their long continuous work has been ignored to confer temporary status on them and ignoring their seniority undue favour was shown to one of the workman Kayam Ullah. In this case the documents filed by the workman and marked as WW1/9 and admitted by management witness MW1 clearly indicates that these claimants were working in different capacities in the NRSA since 1990, 1994 and 1995 as the case may be.

The Ld. Counsel for the management during course of argument stated that it is the stand of the management from the beginning that the claimants/workmen were never employed by the management Railway administration. As such it was not obligatory on the part of the management to regularize their service or confer them with the temporary status. Hence, for anything done, management Railway Administration cannot be held responsible for meting out Hostile discrimination towards the claimants.

In the pleading the workmen have stated that NRSA is a part of the Railway Administration and the claimants were appointed by the Railway administration to work at Karnal Singh Stadium. They were getting remuneration from the officials functioning in the said stadium. Thus they were working under the direct supervision and control of the officials of Northern Railway posted at Karnal Singh Stadium. The reply of the management in this regard is that Railway management has nothing to do with NRSA which is an association to promote the sports activities among the employees of Northern Railway. The office bearers of the association hold honorary posts. The said association in order to maintain and manage the stadium and other activities engages different persons who are paid from out of the income of the stadium and the grant received by the association from the staff welfare fund.

But the management has not produced a single document to prove that NRSA is a separate and distinct entity from that of Northern Railway management and there is no fund flow to that association from the Railway administration. Admittedly no document has been filed by the workmen to prove that they were appointed by Northern Railway. But the management being in an advantageous position of having access to the document could have filed documents to disprove the stand of the workman that they were engaged as casual workers by Northern Railway though working for NRSA in the Karnal Singh Stadium. The law is well settled that party in possession of documents which could have thrown light on the point of controversy is duty bound to produce the same irrespective of the burden of proof notwithstanding the fact that he was not called upon to produce the documents. Hence in this proceeding the management though had the opportunity of disproving the stand of the claimants by producing documents that NRSA is not a department of Northern Railway, failed to do so which on the other hand proves the stand of the claimant that they were working as casual workers for Northern Railway. The refusal by the Railway management to confer them with the status of temporary workers ignoring the fact that they were working since 1990,1994 and 1995 as casual workers and regularizing the service of one Kayam Ullah by showing favouritism and partiality to him amounts to unfair labour practice.

The other argument advanced by the management is that the claimant/workman having not been recruited following due procedure of Railway recruitment cannot be conferred with the status of the temporary workers as claimed by them.

To support his stand he placed reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1.** On behalf of the claimants objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But this is not a case of claiming automatic regularization or absorption. The claimants of this proceeding have ventilated their grievance for being made victims unfair labour practice.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolong period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

> "Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified."

In this case the oral and documentary evidence since proves that these workmen were working as casual worker since the year 1990,1994,1995 respectively the decision of the Railway management refusing to confer temporary status to them is illegal and unjustified.

POINT No. 2

The other grievance of the workmen is that the management being fully aware of the pending industrial dispute illegally terminated their services in gross violation of the provisions of law laid u/s 33 of the ID Act. A petition to that effect u/s 33A was filed by the workmen and in the written reply, the management has admitted the same with explanation that the work done by these workmen having been outsourced through proper tendering process as decided by Railway Board, their engagement came to an end.

But it is worth mentioning that the management, contested this dispute never took permission of the tribunal as an abundant caution before bringing the engagement of the workmen to an end, by whatever name they call them and describe their engagement. Now it is to be examined, what would be the effect of such abrupt end of the employment of the workmen and to what relief they are entitled to.

Under the provisions of section 33(2)(b) of the ID Act, any employer desires of changing the service condition of it's employee shall make an application seeking permission of the tribunal or authority before whom the proceeding is pending. The Hon'ble Supreme Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank vs. Shri Ram Gopal Sharma and Others reported in (2002) 2 SCC Page 244 have held:**

The order of dismissal or discharge passed which brings an end to the relationship of employer and employee from the date of dismissal remains incomplete and remains inchoate as it is subject to approval of the authority under the provisions of 33(2)(b). In other words this relationship comes to an end de-jure only when the authority grants approval. If approval is not given nothing more required to be done by the employee, as it will have to be deemed that, the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available.

In the view of the matter, this tribunal is of the opinion that the management is guilty of not complying the statutory provision of section 33 of ID Act and thus the action of the management in bringing the employment of the workmen to an abrupt end is illegal and nonexistent in the eye of law.

Now coming upon to decide, the benefit to which workmen are entitled to, reliance can be placed in the case of **Hari Nandan Prasad and Another vs. Employer I/R to management FCI reported in (2014)7SCC190.** In this case the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider

reasonable and proper though, those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where as indicated above the workmen during the pendency of their prayer for conferring them the status of the temporary employees where made victims on account of their illegal termination. Keeping the situation in view it is felt proper that an award should be passed directing the management to reinstate the workmen into their service with immediate effect alongwith the back wages. This point is accordingly answered in favour of the workmen. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workmen. It is held that the action of the Railway Management in refusing to confer temporary status to the workmen from the date of their initial appointment is illegal. The workmen of this proceeding are held entitled to the status of the temporary workmen from the date of their initial appointment allowing with regular pay scale for the posts held by them. Since the services of the workmen were terminated during the pendency of this proceeding it is further directed that the management shall reinstate them to service with immediate effect alongwith the back wages from the date of termination till the date of reinstatement. This order will be carried out by the management within one month from the date when the award would become executable failing which the back wages payable to the workmen shall carry interest @ 9% from the date of termination till the date of actual payment. It is made clear that the arrear pay which will accrue in favour of the workmen on fixation of their pay after conferring them temporary status shall not carry any interest. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

9th September, 2019

नई दिल्ली, 6 नवम्बर, 2019

का.आ.1966.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 32/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.11.2019 प्राप्त हुआ था।

[सं. एल–12012/95/2012–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th November, 2019

S.O.1966.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No. II,New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.11.2019.

[No. L-12012/95/2012–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2 NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 32/2013

Date of Passing Award : 26th September, 2019

Shri Umesh Kumar,
S/o. Shri Phool Singh,
Village Sarai Sandho, PO Jalalabad,
Shajahanpur (UP). …Workman

Versus

State Bank of India,
Tehsil Road, Jalalabad,
Shahjahanpur (UP). … Management

Appearances :—

Shri O.P. Sharma, A/R For the Workman

None For the Management

AWARD

The Government of India, Ministry of Labour vide letter No.L-12012/95/2012/IR(B-1) dated 10.04.2013 has referred the present dispute between the workman/claimant Umesh Kumar and the Management of SBI, to this Tribunal under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication to the following effect :-

> ''Whether the action of the management of State Bank of India, Jalalabad branch terminating the services of Shri Umesh Kumar, canteen boy, in violation of provision of Section 25-F of Industrial Dispute Act, 1947 is unjustified ? If so, to what relief the workman is entitled to ?"

2. Notices were issued to both the parties. The claimant/workman Umesh Kumar filed statement of claim with the averments that he was appointed by the Branch Manager Management Bank in June, 1998 as Canteen Boy primarily for preparing & serving Tea besides providing water & other misc. services of Attender for the employees of the Management Bank on monthly wages of Rs.500/- only. Management Bank supplied funds for Tea, water, sugar, gas cylinders, gas stove and other requirement from the funds of the Bank. Wages of the claimant were revised to Rs.1000/- per month w.e.f. November, 2006 which was below the minimum wages. The Bank Management was making payment of wages from June, 1998 through cheque in favour of the workman which used to be encashed by him after putting his signatures on the reverse side of the cheque. Payment of wages were credited w.e.f. February, 2008 in the Saving Bank Account bearing No.11592634225 of the workman, maintained with the said Branch and the said sum of wages used to be transferred from Bank A/c No.098118040034 and vouchers were also regularly prepared for the same. The Management Bank also assigned work of misc. nature to the claimant and same was undertaken by him for which he was also paid b y way of credit/transfer to his Saving Bank Account directly from the account of Bank bearing No.098106040037 and 098058040039 against vouchers of expenditure prepared and passed by the Bank officials in favour of the workman. It is pleaded that during the employment of workman with Bank, HR Department of Zonal Office Lucknown had sought information pertaining to the service of the claimant vide their letter dated 6/3/2010 and the Bank Management had forwarded the same vide report dated 19/3/2010. The claimant was constrained to make request before Higher Authorities such as Hon'ble President, Prime Minister, Finance Minister and Labour Minister, for revision of wages vide registered letter dated 8/4/2011. The claimant again requested Hon'ble Finance Minster, Govt. of India for payment of wages as per rules vide letter dated 29/9/2011 sent through Registered cover. However, instead of making revision of wages, the Management illegally terminated the services of the claimant/workman on 23/2/2012 , without any notice or assigning any reason. Despite demands and requests, the Management also did not pay his earned wages from July, 2011 till his illegal termination. Thereafter the workman raised dispute before the Regional Labour Commissioner, Dehradun vide his application dated 7/5/2012 but the conciliation proceedings resulted in failure. No independent contractor was appointed to run the Bank canteen and same was exclusively run by the Management Bank and canteen facility of the Bank employees is as per usages and custom of the Bank. After illegal termination of the workman, the Bank Management has appointed one Shri Rajpal alias Bacchho for operation of generator on the wages of Rs.100 per day, which work was also carried by the workman during his employment. The workman has continuously worked with the Management since June, 1998 till his illegal termination without any break. Despite best efforts, the workman/claimant could not get any job or work and he is unemployed since the date of his illegal termination. Prayer has been made for reinstatement into service with full back wages and continuity of service.

3- The statement of claim has been resisted by the Management who filed its written statement and took preliminary objections that the claimant/workman was not the employee of the Bank and as such he is not a workman under Section 2(S) of the Act. There is no post of canteen boy in the Management Bank and as such claimant had neither been appointed by the Bank on the post of canteen boy, nor he worked for the Management Bank. The Management Bank never paid any salary/wages to the claimant on monthly basis and never marked any attendance of claimant in its office attendance register. It is stated that the claimant was engaged as canteen boy at Jalalabad Branch of the Bank, by Local Implementation Committee in 1998 and not by the Management Bank. The claimant was paid regularly by the said Committee. All the canteen goods for running canteen such as gas cylinder, gas, utensils for providing tea, tea leaves etc. were provided by Local Implementation Committee and the Management Bank was giving subsidy to the said Committee. Claimant was only bringing milk and was taking money for that from Local Implementation Committee and

the Management Bank has no role to play in all this. Services of the claimant were dispensed with by the Secretary of Local Implementation Committee vide letter dated 23/2/2012. All others allegations of the workman have been denied by the Management and prayer has been made for dismissal of claim petition.

4- The workman/claimant filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations of the Management.

5- Vide order dated 20/3/2014 my learned Predecessor framed following issues and parties were called upon to lead their evidence :-

1) Whether the action of the management of State Bank of India, Jalalabad branch terminating the services of Shri Umesh Kumar, canteen boy, in violation of provision of Section 25-F of Industrial Dispute Act, 1947 is unjustified ? If so, its effect ?

2) To what relief the workman is entitled to ?

6- The workman /claimant examined himself as WW1 and led evidence by way of affidavit Ex.WW1/A. He placed reliance on documents Ex.WW1/1 to Ex.WW1/19. On the other hand, Management examined Shri Anurag Khanna, Branch Manager who filed his affidavit Ex.MW1/A and placed reliance on documents Ex.MW1/1 and Ex.MW1/2. It would not be out of place to mention here that the Management had also examined one Shri Sanjay Kumar , Branch Manager who allegedly worked in SBI, Jalalabad Branch from 18/1/2011 to 5/2/2012 and filed his evidence by way of affidavit & was cross examined in part but did not turn up for further cross examination despite several adjournments and hence, this Tribunal vide order dated 9/1/2019 was constrained to expunge his evidence.

7- I have heard arguments from Shri O.P. Sharma, A/R of the claimant/workman as none appeared on behalf of the Management to address arguments. I have also gone through the records carefully. My findings on the above issues are as follows.

ISSUE No. 1 and 2 :-

8- Both these issues being co-related are taken up together and same can be disposed of conveniently by common discussion.

9- At the outset I may mention that an objection has been raised on behalf of the Management that there is no relationship of employer and employee between the Management & claimant. Since the claimant is not a workman under Section 2(S) of the Act, provisions of Section 25-F of the Act are not applicable to the case.

10- There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management Bank is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management Bank. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

10- This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the Management and the claimant herein. In this respect, it is appropriate to refer to the affidavit Ex,WW1/A of the claimant. It is clear from perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. In cross examination he admitted that he was not issued any identity card by the bank but clarified that he was issued appointment letter by the Branch Manager which is Ex.WW1/6. While denying the suggestion that he was appointed by Local Implementation Committee, of SBI Jalalabad Branch as canteen boy, the claimant has admitted that he was getting wages through similar kind of cheques, one of which is Ex.WW1/M-1 but volunteered that he got wages through cheques till February, 2009 and thereafter wages were paid by debit vouchers.

11- According to the testimony of MW1 Shri Anurag Khanna, the claimant Umesh Kumar was neither the employee of the Management Bank, nor any appointment letter was issued to him by the Management Bank The claimant/workman was engaged as canteen boy at Jalalabad Branch of the Bank, by Local Implementation Committee and was paid regularly by the said Committee. In cross examination while clarifying that he worked in the Jalalabad (Tehsil Road) Branch of SBI from 5/5/2012 to 24/6/2013, he admitted that he was not posted in the said Branch during the employment of the claimant with the Bank. He also admitted that amount of payment voucher in respect of claimant was credited in his bank account. He further admitted that payment was passed by the Bank Manager.

12- Perusal of cheque Ex.WW1/M-1 shows that it was drawn on 1/1/2009 for a sum of Rs.1000/- in favour of the claimant by Local Implementation Committee of SBI having A/c No.98118040034. On the strength of this cheque Ex.WW1/M-1 one may say that the claimant was engaged by the Local Implementation Committee and not by the

Management of SBI. However, it is evident from perusal of the document Ex.WW1/6 that details showing the name of workman (as Umesh Kumar), date of his appointment (as June, 1998), amount of wages paid (Rs.1000/- through cheque No.187266) were furnished to the Assistant General Manager, SBI, RBO (3) Shahjahanpur by the Branch Manager of Jalalabad Branch of SBI. It was also clarified therein that Shri Umesh Kumar was being paid through Account No.11592634225. The said letter dated 19/3/2010 bears stamp of Management Bank under the signatures of Branch Manager. This prima facie substantiates the version of the claimant that he was engaged by the Management Bank as Canteen Boy w.e.f. June, 1998.

12- It is a matter of record that in response to the application filed on behalf of the claimant seeking production of documents, the Management Bank filed on record as many as 92 vouchers alongwith the reply. These vouchers were in possession of the Management Bank and have been produced by them and for the sake of convenience, these are marked as Ex.C-1 (colly.), a perusal of which shows that payments through these vouchers were made by the Management Bank itself to the claimant Umesh Kumar Gupta during the period from 4/5/2009 to 31/3/2011 for providing misc. services to the Management Bank and its officials viz. towards purchase of milk, suger, tea etc. for serving tea & snacks to the bank employees, going to post office for sending letters under Registered cover; filling water in the coolers etc. etc., which shows that payments towards Misc. works were made to the claimant like a casual labour, during the aforesaid period. The Management Bank has not given any explanation as to why it availed the services of the claimant Umesh Kumar in case he was the employee of Local Implementation Committee & not of the Management Bank. Thus, it stands proved on record that the claimant was working as casual worker with the Management Bank for quite long prior to his termination on 23/2/2012, though no letter of appointment was issued to him. Since in the case in hand, it stands clearly proved from the evidence adduced on record, the claimant was engaged as "casual worker" by the Management Bank and as such, to my mind, the claimant is a "workman" within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

11) As discussed above, in the case in hand engagement of the claimant as casual worker for doing petty jobs stands established and as such this Tribunal has no hesitation to hold that there existed relationship of Employer-employee between the Management and the claimant herein and that the claimant had been working as casual worker with the Management since June, 1998 till his termination on 23/2/2012.

12- The vital question now arises for consideration is as to whether termination of the claimant is illegal and against the provisions of the Act. This Tribunal has already held that the claimant was the "Workman" for the purposes of the Act. Admittedly, the Management bank has not issued any notice to the claimant before ordering his termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –
>
> No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –
>
> (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman.

13- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management Bank to be illegal and wrong under the law. As such, it is held that action of the Management in terminating/disengaging the services of the claimant herein was unjustified and illegal.

14- Now the crucial question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. There is pleading in the claim petition as well as evidence to the effect that the workman is unemployed since the day of his termination and has got no source of his livelihood.. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make his both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or ad-hoc work to make his both ends meet, that would not itself amount to gainful employment.

15) Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to her, as such action of the Management in terminating the services of the workman w.e.f. 23/2/2012 is held to be illegal and void.

16) Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was working as casual worker in the Management Bank since 1998. The claimant has pleaded and testified that he is totally unemployed since his termination. The Management has not adduced any evidence to show that the claimant is gainfully employed.

17) The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

18- The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

20- However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like

should be weighed and balanced in taking a decision regarding award of back wages. *One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."*

There is nothing on record to suggest that the claimant/workman had secured the job either through employment exchange or through proper recruitment mode. There is also nothing on record to show that job of the claimant was on permanent basis. His last drawn wages were only to the tune of Rs.1000/- per month. Needless to mention that there are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. **The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.**

15) Having regard to the judicial trends and facts & circumstances of the present case, this Tribunal considers that ends of justice will meet if compensation amount of Rs.1 lakh (Rupees One Lakh) is awarded to the workman/claimant. Therefore, compensation amount of Rs.Two Lakhs is hereby awarded in favour of the claimant/workman which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. These issues are decided accordingly.

ORDER

The reference is answered on the contest in favour of the workman. Lumpsum compensation amount of Rs.1,00,000/- (Rupees One Lakh) is hereby awarded in favour of the claimant/workman which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

26th September, 2019

नई दिल्ली, 8 नवम्बर, 2019

का.आ.1967.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चैन्नई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 48/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th November, 2019

S.O.1967.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Chennai as shown in the Annexure, in the industrial dispute between the management of Chennai Port Trust and their workmen, received by the Central Government on 08.11.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT CHENNAI

ID No. 48/2018

Present: DIPTI MOHAPATRA, LL.M. PRESIDING OFFICER

Date: 30.09.2019

Sri R.S. Daniel Jayakumar
S/o Samuel
No. 70, C-Block, TNHB, Coronation Nagar
Korukkupet
Chennai-600021 : 1st Party/Petitioner

AND

1. The Chairman
Chennai Port Trust, Rajaji Salai
Chennai-600001 : 2nd Party/1st Respondent

2. The Dy. Port Conservator
Chennai Port Trust, Rajaji Salai
Chennai-600001 : 2nd Party/2nd Respondent

3. The President
Shipping Department
Marine Division, Chennai Port Trust
Rajaji Salai
Chennai-600001 : 2nd Party/3rd Respondent

Appearance:

For the 1st Party/Petitioner : Advocate, M/s P. Krishnan, V. Balaji
For the 2nd Party/Respondents : Advocate, Mr. M.R. Dharanichander

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant while challenges the legality of the order vide order dtd. 19.04.1991 of the Respondent terminating him from his service w.e.f. 03.11.1990 as illegal claims to set aside the same with consequential benefits. The Applicant case in brief is that he joined as Fireman in Marine Diivision, Chennai Port Trust on dtd. 06.11.1972. He was promoted to the post of Fireman, Grade-I on dtd. 05.05.1981 and further promoted to the post of Fireman Driver on 17.02.1984. While the matter stood thus, the Respondent issued the Order No. A/8/15055/90/M dtd. 18.04.1991. On being aggrieved with the order of termination, he raised the dispute before the Conciliation Officer-The Assistant Labour Commissioner (C), Chennai vide his application in the month of February 2017. The matter in dispute was taken up by the Conciliation Officer. The dispute could not be resolved before the Conciliation Officer who on expiry of 45 days issued a Certificate in favour of the Applicant enabling him to approach this Forum of Tribunal for redressal of his grievances.

3. The Respondent entered appearance by filing its Counter denying almost all the claims averred in the Application. The Counsel for the Respondent raises strenuous objection on Admission. The main plank of contention is that the Application is not maintainable as barred by Limitation and liable for dismissal. Attention was drawn on the prescribed provision of law under 2A(2) and (3) of the Act. On perusal of the Office Note and relevant documents on

record, it reveals that as required under the provision under the Act, the Applicant approaches this Forum by filing this Application under 2A(2) after expiry of 45 days from the date it raised dispute before the Labour Machinery but not before expiry of 3 years from the alleged date of his termination..

4. In order to bring the instant Application within the ambit of the amended provision under 2A Act, it is to be seen if the Applicant approaches this Forum-the Industrial Tribunal after exhausting all pre requisite conditions contemplated under required provisions of the Act. Admittedly the amended insertion under 2A of the ID Act is a beneficiary legislation for the workmen, which provides a right in favour of the workmen to approach directly to the appropriate Forum under the Act for redressal of grievance in an expeditious manner even before the dispute is referred by the appropriate Government.

Section 2A sub clause (2) of the ID Act reads as follows:

> ***"Notwithstanding anything contained is Section 10 any such workmen as is specified in Sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudication upon the dispute, xx xx xx xx xx xx xx xx xx xx***

Section 2A of sub clause (3) reads as follows ***"The application referred to in Sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in Sub-section (1)"***

5. In combined reading of both the sections it needs to be seen if the Applicant has raised the dispute before the Labour Machinery and after expiry of 45 days approached the Tribunal under 2A within a period of 3 years from the alleged date of termination. Admittedly, the Applicant raised the dispute before the Labour Machinery, the Assistant Labour Commissioner (C), Chennai on February, 2017. The Certificate issued by the Conciliation Officer-cum-Labour Commissioner is produced by the Applicant. On perusal of the same, it reveals that before resolving the dispute, the Applicant moved the Conciliation Officer to discontinue the conciliation proceedings as he was willing to raise the dispute before the Industrial Tribunal, Chennai. The Conciliation Officer accordingly issued the Certificate showing that the 45 days in view of the 2A(2), expires on 24.03.2017 and thereby he enabled the Applicant to approach this Forum. The Applicant moved this 2A(2) Application on dtd. 28.11.2018 challenging the alleged order of termination dtd. 18.04.1991 w.e.f. 03.11.1990. But instead of issuing such Certificate to the Applicant, the Conciliation Officer could have sent the Failure Report to the Appropriate Government for further follow-up action. In case any Industrial Dispute exists therein, the Appropriate Government could have referred the dispute to the Central Government Industrial Tribunal for adjudication. In such case, the Applicant might have benefitted under the beneficiary legislation under the ID Act. As such, the issuance of Certificate enabling the Applicant not being in correct direction certainly defeats the interest of justice so far the provision under 2A(2) and (3) of the Act is concerned.

6. In view of the discussion held in preceding paragraphs, it undoubtedly an admitted case that the Applicant approached the Labour Machinery in the month of February 2017 and after expiry of 45 days being armed with the Certificate issued by the Conciliation Officer, filed this Application under 2A on 28.11.2018 (as reveals from the Office Note and relevant document on record) which is necessarily beyond the period of limitation of 3 years from the date of the alleged termination of him from job. At the cost of repetition, it is worthwhile to say that the alleged date of termination of the Applicant from service was with effect from 03.11.1990 as per the order issued by the Respondent vide No. A/8/15055/90/M dtd. 18.04.1991. As such, the Applicant approaches the Labour Machinery-Conciliation Officer only in the month of February 2017 and expiry of 45 days thereafter approaches this Forum of Industrial Tribunal on 28.11.2018, almost after a period of 28 years On bare perusal of the Application as well as his Petition it appears the Applicant misconceived the spirit of the legislation under the Act as in such case the provision of Law as contemplated in 2A(2) and (3) of the Act needs strict adherence by the Applicant. Reliance is placed in the judicial verdict propounded by the ***Hon'ble High Court of Madras (Madurai Bench) in WP (MD) 15552/2015 in the case of Prince Packianathan Vs. General Manager, Tamil Nadu Transport Corporation, Nagercoil Division.***

7. In view of the discussion held in preceding paragraphs the Application 2A(2) of the ID Act filed by the Applicant almost after 21 years, deserves no merit for consideration.. The Application is not sustainable under the eye of Law.

In the result, the Application in ID 48 of 2018 under 2A(2) stands dismissed.

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 30th Sept., 2019)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2019

का.आ.1968.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 151/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th November, 2019

S.O.1968.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. *151/2013* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1,* New Delhi as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 08.11.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No. 1, NEW DELHI

ID No.151/2013

Shri Ajay Kumar s/o. Late Shri Harpal Singh,
Peon, Lastly posted at
UCO Bank,
Krishna Nagar Branch, Delhi.
Through Shri Vinay Kumar, Chamber No.B-83,
BGS Block, Tis Hazari Courts,
Delhi 54. …Workman

Versus

1) The Management of UCO Bank
Through its General Manager,
5, Parliament Street, New Delhi.

2) The Branch Manager, UCO Bank,
Krishna Nagar, Delhi.

3) The CMD, UCO Bank,
Head Office 3-4,DD Block,. Sector Salt Lake,
Kolkatta 700064 …Management

AWARD

This Award shall decide a claim petition filed by the workman/claimant Ajay Kumar under Section 2-A of the Industrial Disputes Act, 1947(in short the Act) with the averments that his father late Shri Harpal Singh was working as Peon under Management No.2 herein on regular basis. After the death of his father on 3/12/2005, the claimant approached the Management number of times for getting employment on compassionate grounds but the Management failed to consider the same. However, he was appointed as a Peon w.e.f. 1/8/2006 and was treated as a daily rated/muster roll worker and was paid wages under Minimum Wages Act, while his counter parts were getting all benefits of earned leave, gazetted/festival holidays. He claimed that he was a regular employee as he was appointed on compassionate basis but was treated to be a daily rated/muster roll employee. His services were terminated illegally w.e.f. 5/6/2012 without any notice, notice pay/compensation, memo or charge sheet and without displaying any seniority list, though he had completed more than 240 days of continuous employment. No seniority list was prepared and even the persons juniors to the workman have been retained by the Management Bank and as such termination of the workman/claimant by the Management Bank is in violation of Section 25-F, G and H of the Act. He got sent a demand notice vide communication dated 5/7/2012 but to no response. Thereafter she approached the Conciliation Officer but to no avail. He has prayed for reinstatement into service with continuity of service and full back wages and all consequential benefits.

2- Written statement was filed on behalf of management/s taking various preliminary objections, inter-alia that the claim is not maintainable as the claimant is not a workman as defined under Section 2(S) of the Act. The claimant was not appointed as peon or on any other post w.e.f. 1/8/2006 or any other date by the Bank on the compassionate basis or otherwise in any manner by the Competent Authority as per procedure and he was not the employee of the Bank. There is no continuous service of more than 240 days in the present matter. All the averments of the workman/claimant have been denied. Relief of reinstatement claimed by the workman is not tenable as he is presently working with other organization and getting a handsome income. It has been denied that demand notice was also served upon the Management by the claimant vide communication dated 5/7/2012. Prayer has been made for dismissal of claim petition.

3. Based on the pleadings of the parties, this Tribunal vide order dated 19.03.2014 framed the following issues and the case was then listed for evidence of the claimant union:

(i) Whether there was relationship of employer and employee between the parties ? If yes, whether claimant was having status of a workman ?

(ii) Whether claimant rendered continuous service of 240 days, in preceding 12 months from the date of her alleged termination by the bank ?

(iii) Whether claimant is entitled to relief of reinstatement in service of the bank ?

4- Claimant, in order to prove her case examined himself as WW1, whose affidavit is Ex.WW1/A and he relied on documents Ex.WW1/1 to Ex.WW1/16. On the other hand, the Management, in order to rebut the case of the claimant examined Shri Javed, Chief Manager as MW1, whose affidavit is Ex.MW1/A. No other witness was examined by either of the parties.

5- Shri Vinay Kumar, authorized representative, advanced arguments on behalf of the claimant., whereas Shri Kamal Khurana, authorized representative advanced arguments on behalf of the management. I have gone through the records and my findings on above issues are as follows.

Issue No. 1 and 2

6. Both these issues being inter-connected are taken up together and the same can be disposed of by common discussion.

7- Ld. AR appearing on behalf of the Management strongly contended that there is no relationship of employer and employee between the Management & claimant, nor the claimant has completed 240 days of service in a calendar year, preceding to his alleged termination. As such, provisions of Section 25-F of the Act are not applicable to the case in hand. It was also contended that onus is also upon the claimant to prove that he was in the employment of the Management Bank and has completed more than 240 days in a calendar year.

8) Per contra, learned A/R appearing on behalf of the Claimant submitted that the claimant worked as a regular employee after she was appointed on compassionate basis but as daily rated/muster roll employee from 2006 till 5/6/2012, when his services were illegally terminated by the Management, without giving any notice, notice pay/compensation, memo or charge sheet, despite the fact that he had completed more than 240 days of continuous employment under the Management.

9) There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of her employment with the Management Bank. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.* .

10- This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the Management and the claimant herein. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. The claimant has been cross examined and in his cross examination also, while giving his educational qualification as 9th class pass, he deposed that he joined service in the bank in the year 2006 as Peon. No appointment letter was issued to him nor he had appeared for any test/interview, nor his name was sponsored by any Employment Exchange. No PF/ESI was deducted from his wages. He was getting salary in cash and his signatures used to be obtained on the receipt. He has filed on record a number of documents viz. copy of legal demand notice dated 5/7/2012 as Ex.WW1/1 and its A.D card as Ex.WW1/2; Conciliation failure report as Ex.WW1/3; copy of the statement of working expenses vouchers of the Management as Ex.WW1/4 and Ex.WW1/5; letter of authority filed by his mother Smt. Usha as Ex.WW1/6; copy of application submitted by his mother Smt.Usha to the Asstt.General Manager UCO Bank, High Court Branch for his

employment on compassionate ground as Ex.WW1/7; Copy of the communication dated 30/11/2006 which Management No.2 had sent to the Regional Office of Management Bank (Ex.WW1/8), thereby forwarding the request dated 9-11-2006 (Ex.WW1/9) of Smt.Usha for a job on compassionate ground; copy of RTI Application as Ex.WW1/10 and its reply received from Public Information Officer of UCo Bank as Ex.,WW1/11; statement of claim made by the claimant before the Asstt. Labour Commissioner as Ex.WW1/12; reply thereto of the Management as Ex.WW1/13; copy of rejoinder filed by her before ALC as Ex.WW1/14; copy of his application under Section 11(4) of the Act for production of documents as Ex.WW1/15 and its reply given b y the Management as Ex.WW1/16.

11- Testimony of MW1 Shri Javed is in line with the averments made in the written statement. According to him, the claimant was not the employee of the Management Bank and that the Branch Manager of the Management Bank has no power to make any appointment. In cross examination he could not say if the claimant had actually worked in the Management Bank. He admitted that entries relating to the payment purportedly made to the workman Ajay Kumar as shown in the document/vouchers Ex.MW1/W-1 (colly.) are correct and genuine. He showed his ignorance if any notice or compensation was given to the claimant prior to his termination. No seniority list of the casual workers working in the Management Bank is maintained. The casual workers is paid expenses/wages according to the norms of the Bank. He clarified that document Ex.MW1/W-2 does not pertain to Krishna Nagar Bank rather bears the stamp of UCO Bank, Delhi High Court Branch. He could not admit or deny that the workman had worked for over 240 days in a calendar year with the Management Bank.

12- It is pertinent to mention here that the claimant has not filed any document to substantiate his claim that he was appointed on compassionate ground after the death of his father Shri Harpal & was treated as regular daily rated/muster roll employee. However, in the light of the evidence adduced on record by the parties as discussed above, as well as the documents/payment vouchers Ex.WW1/4, Ex.WW1/5 and Ex.MW1/W-1 (colly.), it can be concluded that even in the year 2011 the claimant used to work as Peon under the Management and that is why payment vouchers for purchase of Cartridge and Speed Post made through Ajay were issued by the Management Bank. Testimony of the claimant that he continuously worked from 1/8/2006 till 5/6/2012 has gone unchallenged. As such, it stands proved on record that there existed relationship of employer-employee between the Management of UCO Bank. It is well settled position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act or in accordance with Standing Order applicable to the establishment concerned . Since in the case in hand, it stands clearly proved from the pleadings and evidence on record that the claimant was working under the Management Bank and she was paid in cash through vouchers. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

13) As discussed above, in the case in hand it stands proved that the claimant continuously worked with the Management Bank from 1/82006 till 5/6/2012 when he was illegally terminated from service, whereas the Management has not filed any document in the form of abstract of attendance of claimant or other such workers so as to show that claimant has not completed 240 days in a calendar year. In such circumstances, statement of the claimant who appeared as WW1 can not be brushed aside, more so for the reason that the job of Peon in the Branch of Management bank is undisputedly of regular and perennial nature. The Management bank has not adduced any evidence to show as to who was/were the person/s engaged in place of claimant during the relevant period from 2006 to 2012..

14) Net result of the aforesaid discussion is that there is relationship of Employer-employee between the Management and the claimant herein and that the claimant had completed 240 days in a calendar year preceding her termination from service. Both these issues are, therefore, decided accordingly in favour of the claimant and against the Management.

Issue No. 3 :-

15) Now the vital question for consideration is as to whether termination of the claimant is illegal and against the provisions of the Act. This Tribunal while rendering findings on Issue No.1 and 2 has held that the claimant was the "Workman" for the purposes of the Act, whereas the plea of the Management that the claimant /workman was not its employee is falsified. Testimony of the claimant that he worked under the Management from1/8/2006 till 5/6/2012 has gone unassailed. Admittedly, the Management bank has not issued any notice to the claimant before ordering his termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

16- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

17- Since there is no evidence on record that a notice or in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman w.e.f. 5/6/2012 is held to be illegal and void.

18- Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It stands proved on record that claimant was continuously in the employment of the Management Bank from 1/8/2006 till 05/06/2012 when his services were illegally terminated. The workman/claimant has pleaded to be unemployed since the date of his termination and has prayed for reinstatement into service with full back wages. It would be worthwhile to mention here that neither in the pleadings nor in his evidence the claimant has stated as to what was his last drawn wages. However, it has come to on record that in lieu of the work performed by him, he was paid in cash after obtaining signatures on vouchers by the Management Bank. From the Account Ledger Report Ex. MW1/W-1(colly.), it can not be deduced exactly as to what were the monthly wages/earning of the claimant/workman while working under the Management Bank on daily wage basis, because the said report simply shows that the workman/claimant was paid amount ranging from Rs.100 to Rs.250/- on different dates and not regularly. The appointment of the claimant was also not through any written test/interview or on the basis of compassionate ground rather he was simply working on daily wage basis. No doubt, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule, but latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not to be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the

workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

19- Having regard to the recent judicial trends and the aforesaid facts and circumstances of the case, an amount of Rs.2,00,000/- (Rupees Two Lakhs only) appears to be just and reasonable, and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within two months from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum till realization of the amount. Award is passed accordingly.

Date : 3.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2019

का.आ.1969.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 152/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th November, 2019

S.O.1969.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 152/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 08.11.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No. 152/2013

Smt. Pushpa w/o. Shri Binnu Kumar,
Peon, Lastly posted at
UCO Bank,
Supreme Court Compound, Delhi.
Through Shri Vinay Kumar, Chamber No.B-83,
BGS Block, Tis Hazari Courts,
Delhi 54. …Workman

Versus

1) The Management of UCO Bank
Through its General Manager,
5, Parliament Street, New Delhi.

2) The Branch Manager, UCO Bank,
Supreme Court Compound, Tilak Marg, Delhi

3) The CMD, UCO Bank,
Head Office 3-4, DD Block, Sector Salt Lake,
Kolkatta 700064 …Management

AWARD

This Award shall decide a claim petition filed by the workman/claimant Smt. Pushpa under Section 2-A of the Industrial Disputes Act, 1947(in short the Act) with the averments that her father late Shri Kalu Ram who was working as Peon under Management No.2 herein on regular basis, expired on 3/12/2005 and after his death, the claimant approached the Management for getting employment on compassionate grounds but the Management failed to consider the same. However, she was appointed as a Peon w.e.f. 27/2/2000 and was treated as a daily rated/muster roll worker and was paid wages under Minimum Wages Act, while her counter parts were getting all benefits of earned leave, gazetted/festival holidays. She claimed that she was a regular employee as she was appointed on compassionate basis but as daily rated/muster roll employee. Her services were terminated illegally w.e.f. 28/5/2012 without any notice, notice pay/compensation, memo or charge sheet and without displaying any seniority list, though she had completed more than 240 days of continuous employment and as such her termination is in violation of Section 25-F, G and H of the Act. She got sent a demand notice dated 20/.7/2012 but to no response. Thereafter she approached the Conciliation Officer but to no avail. She has prayed for reinstatement into service with continuity of service and full back wages and all consequential benefits.

2- Written statement was filed on behalf of management/s taking various preliminary objections, inter-alia that the claim is not maintainable as the claimant is not a workman as defined under Section 2(S) of the Act. The claimant was not appointed as peon or on any other post on 27/2/2000 or any other date by the Bank in any manner by the Competent Authority as per procedure and she was not the employee of the Bank. There is no continuous service of more than 240 days in the present matter. All the averments of the workman/claimant have been denied. Relief of reinstatement claimed by the workman is not tenable as she is presently working with other organization and getting a handsome income. It has been denied that demand notice was also served upon the Management by the claimant vide communication dated 20/7/2012. Prayer has been made for dismissal of claim petition.

3. Based on the pleadings of the parties, this Tribunal vide order dated 19.03.2014 framed the following issues and the case was then listed for evidence of the claimant union:

(i) Whether there was relationship of employer and employee between the parties ? If yes, whether claimant was having status of a workman ?

(ii) Whether claimant rendered continuous service of 240 days, in preceding 12 months from the date of her alleged termination by the bank ?

(iii) Whether claimant is entitled to relief of reinstatement in service of the bank ?

4- Claimant, in order to prove her case examined herself as WW1, whose affidavit is Ex.WW1/A and he relied on documents Ex.WW1/1 to Ex.WW1/15. On the other hand, the Management, in order to rebut the case of the claimant examined Shri P.K.Aggarwal, Assistant General Manager as MW1, whose affidavit is Ex.MW1/A. No other witness was examined by either of the parties.

5- Shri Vinay Kumar, authorized representative, advanced arguments on behalf of the claimant., whereas Shri Kamal Khurana, authorized representative advanced arguments on behalf of the management. I have gone through the records and my findings on above issues are as follows.

Issue No. 1 and 2

6. Both these issues being inter-connected are taken up together and the same can be disposed of by common discussion.

7- Ld. AR appearing on behalf of the Management strongly contended that there is no relationship of employer and employee between the Management & claimant, nor the claimant has completed 240 days of service in a calendar year, preceding to her alleged termination. As such, provisions of Section 25-F of the Act are not applicable to the case in hand. It was also contended that onus is also upon the claimant to prove that she was in the employment of the Management Bank and has completed more than 240 days in a calendar year. Onus is upon the workman/claimant to prove the relationship of employee-employer between the parties.

8) Per contra, learned A/R appearing on behalf of the Claimant submitted that the claimant worked as a regular employee after she was appointed on compassionate basis but as daily rated/muster roll employee from 27/2/2000 till 28/5/2012, when her services were illegally terminated by the Management, without giving any notice, notice pay/compensation, memo or charge sheet, despite the fact that she had completed more than 240 days of continuous employment under the Management.

9) There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of her employment with the Management Bank. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.* .

10- This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the Management and the claimant herein. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. The claimant has been cross examined and in her cross examination also, while giving her educational qualification as 8th pass, she deposed that she joined service in the bank at the age of 16-17 years in the year 2000 as Peon. No appointment letter was issued to her nor she had appeared for any test/interview. She has filed on record a number of documents viz. copy of legal demand notice dated 20/7/2012 as Ex.WW1/1; Conciliation failure report as Ex.WW1/2; copy of the identity card as Ex.WW1/3 issued in her favour by the Management showing her designation as Peon; copies of vouchers as Ex.WW1/4; copy of the letter dated 18/10/2010 (Ex. WW1/5) whereby the Deputy General Manager of Management No.2 had forwarded the claimant's application (Ex.WW1/6) for employment in the Bank as Sweeper cum Peon, to the Zonal Manager of UCO Bank, New Delhi; copy of the representation dated 9/6/2012 (Ex.WW1/7) which was sent to CMD, UCO Bank by some of the Accounts Holders holding accounts with the Management No.2 with the request to restore the employment of Ms. Pushpa who was allegedly removed illegally from service on 1/6/2012; copy of the letter (Ex.WW1/8) sent by Income Tax Pan Services Unit to the claimant/workman at the address of Management No.2 regarding allotment of PAN No. and issuance of PAN card; request letter dated 31/12/2007 (Ex.WW1/9) which was given by the claimant to the Manager of UCO Bank, Supreme Court Compound Branch for attestation of her photo and signatures; copy of the statement of working expenses/daily needs account filed by the Management before the Conciliation Officer as Ex.WW1/10 (colly.); statement of claim made by the claimant before the Asstt. Labour Commissioner as Ex.WW1/11; reply thereto of the Management as Ex.WW1/12; copy of rejoinder filed by her before ALC as Ex.WW1/13; copy of reply filed by Management to her application under Section 11(4) of the Act for production of documents as Ex.WW1/15.

11- Testimony of MW1 PK Aggarwal is in line with the averments made in the written statement. According to him, the claimant was not the employee of the Management Bank and that the Branch Manager of the Management Bank has no power to make any appointment. However, he conceded that the documents Ex.WW1/3 to Ex.WW1/5 pertain to the Management Bank. He admitted that claimant was performing duty of Peon like regular counterparts and the working hours of the claimant was from 10 AM to 5 PM. He deposed that payment of the job performed by the claimant was made by the bank on different days in cash by obtaining her signatures on voucher/s. He admitted that document Ex.WW1/10 (colly.) is the copy of the statement of account relating to General Ledger Expenses of the Management Bank. He also admitted that identity card is generally issued by the Management to its employees but volunteered that sometimes entry pass is issued for security point of time to the workers of the contractor and./or to the casual workers.

12- It is pertinent to mention here that the claimant has not filed any document to substantiate her claim that she being appointed on compassionate ground after the death of her father but was treated as regular daily rated/muster roll employee. However, in the light of the evidence adduced on record by the parties as discussed above, as well as the documents Ex.WW1/3, Ex.WW1/5, Ex.WW1/6 and Ex.WW1/9 as referred to above, it is apparent that the claimant was working as Peon– may be on part time basis – under the Management. Testimony of the claimant that she continuously worked from 27/2/2000 till 28/5/2012 has gone unchallenged. As such, it stands proved on record that there existed relationship of employer-employee between the Management of UCO Bank. It is well settled position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act or in accordance with Standing Order applicable to the establishment concerned . Since in the case in hand, it stands clearly proved from the pleadings and evidence on record that the claimant was working under the Management Bank and she was paid in cash through vouchers. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There*

is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

13) As discussed above, in the case in hand it stands proved that the claimant continuously worked with the Management Bank from 27/2/2000 till 28/5/2012 when she was illegally terminated from service, whereas the Management has not filed any document in the form of abstract of attendance of claimant or other such workers so as to show that claimant has not completed 240 days in a calendar year. In such circumstances, statement of the claimant who appeared as WW1 can not be brushed aside, more so for the reason that the job of Peon in the Branch of Management bank is of regular and perennial in nature. The Management bank has not adduced any evidence to show as to who was/were the person/s engaged in place of claimant during the relevant period from 2000 to 2012.

14) Net result of the aforesaid discussion is that there is relationship of Employer-employee between the Management and the claimant herein and that the claimant had completed 240 days in a calendar year preceding her termination from service. Both these issues are, therefore, decided accordingly in favour of the claimant and against the Management.

Issue No. 3 :-

15) Now the vital question for consideration is as to whether termination of the claimant is illegal and against the provisions of the Act. This Tribunal while rendering findings on Issue No.1 and 2 has held that the claimant was the "Workman" for the purposes of the Act, whereas the plea of the Management that the claimant /workman was not its employee is falsified. Admittedly, the Management bank has not issued any notice to the claimant before ordering her termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

16- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

17- Since there is no evidence on record that in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman w.e.f. 28/5/2012 is held to be illegal and void.

18- Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It stands proved on record that claimant was continuously in the employment of the Management from 27/2/2000 till 28/5/2012 when her services were illegally terminated. Though the workman/claimant has pleaded to be unemployed since the date of her termination and has prayed for reinstatement into service with full back wages, however in her testimony she admitted that she is earning around Rs.2000/- per month

by working as domestic help in a house. It would be worthwhile to mention here that neither in the pleadings nor in her evidence the claimant has stated as to what was her last drawn wages. However, it has come to on record that in lieu of the work performed by her, she was paid in cash after obtaining signatures on vouchers by the Management Bank. From the statement of working expenses/daily needs account of the Management Ex.WW1/10 (colly.), it can not be deduced exactly as to what were the monthly wages/earning of the claimant/workman while working under the Management Bank on daily wage basis. The appointment of the claimant was also not through any written test/interview or on the basis of compassionate ground rather she was simply working on daily wage basis. No doubt, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule, but latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not to be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

19- Having regard to the recent judicial trends and the aforesaid facts and circumstances of the case, an amount of Rs. 2,00,000/- (Rupees Two Lakhs only) appears to be just and reasonable, and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within two months from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum till realization of the amount. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 04.09.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2019

का.आ.1970.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 21/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2019 को प्राप्त हुआ था।

[सं. एल–12011/82/2018–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th November, 2019

S.O.1970.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 08.11.2019.

[No. L-12011/82/2018-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22nd OCTOBER 2019

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

C R No.21/2018

I Party	**II Party**
The General Secretary, All India Canara Bank Sub Employees Union, 20, 9th Main, 3rd Block, Jayanagar, BANGALORE – 560 001.	The General Manger, Canara Bank, Personal Wing, Head Office, J C Road, BANGALORE – 560 002.

Appearances :

I Party : None

II Party : Naveen Tao, Advocate

1. The Government of India, Ministry of Labourvide order No. L-12011/82/2018-IR(B-II) dated 28.11.2018 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

"Whether the demand of regularization raised by the Union can be considered as Industrial Dispute under I.D.Act 1947? If so, whether the demand for regularization of 32 daily wage workers as per Annexure as sub-staff and part-time sweepers working in different branches for several years to the Management of Canara Bank is legal and justified? If yes, what relief the Union and the workmen are entitled to?"

2. Subsequent to reference of the case notice was issued to both the parties. The 1st Party though served has not appeared to persue their claim. The 2nd Party has filed its Statement disputing the very genuineness of the dispute raised by the 1st Party workman. It is contended that the cleaning and dusting of the branches/officers of the Bank is undertaken by their permanent employees. i.e., Housekeeper cum Peon category. In the event of their absence, the branches engage the persons intermittently for the work and such intermittent engagement would not create any right to the said post. In many cases the branches/Officers of the 2nd Party have not engaged persons even for a single day, certain persons who are working at the Canteen managed by outsiders were shown as engaged. The 2nd Party bank being a Public Sector Undertaking has got clear norms for recruiting employees in each cadre including the post of Housekeeper cum peon. The judicial forms/authorities cannot direct the government to make temporary casual labourers as permanent employees.

3. The burden of justifying their demand is on the 1st Party as per the referred dispute. Since they have not pursued their demand, the inevitable conclusion is that they are not interested in the adjudication of the dispute. In the absence of any claim statement and proof it cannot be held that the dispute raised by them is an Industrial Dispute under ID Act 1947.

4. In the circumstance, it is inevitable to hold that the 1st Party workman are not entitled for any relief claiming in view of the management rejecting the claim for regularization into permanent post.

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 22nd October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2019

का.आ.1971.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 12/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2019 को प्राप्त हुआ था।

[सं. एल–12011/122/2007–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th November, 2019

S.O.1971.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2008) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Bangalore as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 08.11.2019.

[No. L-12011/122/2007-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 30TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R 12/2008

I Party	**II Party**
The General Secretary, Syndicate Bank Staff Association, Anand Plaza, II Floor, Near Anand Rao Circle, Bangalore - 560 009.	The Assistant General Manager, Syndicate Bank, Regional Office, 1560, Maruthigalli, Belgaum - 590 001.

Appearance

Authorised Representative for I Party : Mr. A Srinivasa Alse

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12011/122/2007-IR(B-II) dated 15.02.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the punishment of reduction in Basic pay by one stage for one year imposed on Sri Sudarshan V. Acharya by the management of Syndicate Bank is legal and justified? If not, to what relief the workman is entitled to?"**

1. The union has espoused the cause of the 1st Party workman Sh. Sudarshan V Acharya against the punishment order passed by the Disciplinary Authority / AGM dated 22.02.2007 thereby imposing the punishment of reduction of basic pay by one stage for 1 year.

2. The fact is,

The 1st Party while working at Khanapur Branch enrolled himself as a candidate for CAIIB examination conducted by the Indian Institute of Banking and Finance, Mumbai in the year 1990 and cleared the Part-I consisting of 5 papers, he wrote the Part-II exam in June 2003, the examiners who evaluated his answer script reported to Indian Institute of Banking and Finance, Mumbai that they found currency note of Rs. 50/- in each of his answer books. The Institute called for his explanation and he gave his reply dated 25.12.2003; the Institute imposed following punishment vide order dated 07.07.2004

a) Cancellation of his result for June 2003 Associate Examinations

b) Debarred from appearing for 5 consequent examinations held and to be held after June 2003.

c) Recommended the 2nd Party Bank to initiate Disciplinary Action for the alleged misconduct of malpractice in the Associate Examination.

Thereafter the 2nd Party called for his explanation on the alleged malpractice adopted by him; he denied the allegation, the charge sheet dated 04.02.2006 was issued to him. He denied the charges; Departmental enquiry was held. Vide his report dated 12.10.2006 Enquiry Officer held that the charges are proved. The Disciplinary Authority accepted the enquiry report and proposed the punishment of compulsory retirement from service. However, Disciplinary Authority reduced the punishment to reduction in basic pay by one stage for one year. His appeal came to be rejected by the Appellate Authority.

3. Before this Tribunal, the 1st Party in its statement would contend that the Domestic Enquiry held against the workman is not fair and proper and the finding of the Enquiry Officer is perverse. His past records were not considered while passing the order.

4. The 2nd Party in their statement justified their action and denied the allegation against the procedure adopted during the enquiry and also finding of the Enquiry Officer. It was asserted that the punishment imposed is just and proper and as per the provisions of Bipartite Settlement and in consonance with the principles of natural justice.

5. The 1st Party though had strongly attacked the fairness of the Domestic Enquiry, vide memo dated 10.07.2012 submitted that he does not wish to challenged the validity of Domestic Enquiry and may be permitted to argue on the perversity of the findings. Thus, the matter was posted for argument on merits. But the 1st Party remained continuously absent; though his counsel had undertaken to submit written argument the undertaking is not complied.

6. Sh. RU for 2nd Party submitted his argument, justifying the punishment order and further submitted that subsequently his increment is restored and he had availed timely promotion.

7. Perused the Enquiry Records. Before the Enquiry Officer three witnesses were examined for the Management and 13 documents were marked. The statement of the 1st Party was recorded and both parties had submitted their written briefs.

The first witness was the Deputy Director, Indian Institute of Banking and Finance, Southern Zonal Office, Chennai. Through him the 2 answer books written by the CSE were produced. The witness identified the letter addressed to the Institute by one of the examiners on the subject Laws and Practices relating to Banking, thereby stating that a currency note of one piece of Rs. 50/- note tucked inside pg No. 4 and 5 of the Answer Book bearing no 132391 and also, about handing over the currency to the Institute; the number of currency tucked was stated and it was further stated same was deposited with the Petty Cash of the Institute. He also identified the document through which Deputy Director placed the matter before the Director and as per records the answer books referred by the examiners was that of the 1st Party workman. The witness further produced letter dated 03.07.2003 from Sh. V. Rajamani another examiner in the subject Business Management Part-A addressed to the Deputy Director of the same office, alleging that he found one piece of Rs. 50/- in pg.3 of the answer book bearing No. 224233 of the answer book and had submitted the answer book along with currency note. The said currency was deposited with the Petty Cash and the answer book was returned to the examiner. As done earlier the matter was placed before the Director of Examination. The Deputy Director of the Institute put up the office note to the Director of Examination mentioning above the complaint received from Sh. V. Rajamani, the said answer book belonged to the CSE; vide letter dated 17.09.2003 the CSE was communicated about the complaint received against him. Vide letter dated 15.12.2003 his explanation was sought from, on the allegations; the workman had submitted his explanation. The Institute passed the punishment order as supra and communicated the same to the workman; proceedings were held by the Examination Committee of the Institute detailing the nature of the malpractice adopted, charges established and penalty imposed on the CSE.

The second and third witnesses were the examiners. All the three witnesses were subjected to thorough cross examination.

8. The stand of the 1st Party was of total denial. The alleged currency notes were not produced in evidence for which the 1st Party took exception that those currency notes ought to have been produced and subjected for fingerprint examination. Another limb of defence was, the Investigation Report based on which the Indian Institute of Banking and Finance punished him was not produced and he contended that without a proper investigation he is punished by the Institute, he also stressed that there were no eye witnesses and he was not caught red-handed as alleged in the charge sheet, hence, he cannot be held guilty of the charges. In fact, by the time the answer scripts were produced in the enquiry the luster mark of the gum pasting the note to the answer script was not visible.

9. From the perusal of the enquiry report I find that the Enquiry Officer has based his conclusion on an analysis of the oral evidence of the witnesses, viz-a-viz their cross examination admissions. It is not the defence case that he was acquainted with the examiners or any staff who are engaged in the Administration and Conducting of Examination. No animosity could be inferred against any of them for introducing currency notes in his answer scripts. Non-production of

alleged currency notes by itself does not cause any dent in the case. These notes were not required for identification; it is not a criminal case to prove each and every fact beyond reasonable ground. Both examiners found the currency note in the answer script written by the 1st Party, the answer scripts were produced in the enquiry; there was no dispute in this regard. The nature of evidence required was circumstantial and same is brought on record by the evidence of three witnesses and also the undisputed documentary evidence. The nature of allegation definitely did not demand a separate investigation since all the facts were proved by the complaint of the examiners and the documents spoke for themselves. Finger print evidence cannot be expected since the currency notes are not glossy to bear the fingerprint of the person who handled them; moreover they were handled by others before Disciplinary Authority initiated enquiry proceedings in this case.

10. The Enquiry Officer's conclusion flows from the reasoning discussed in the body of this report. It is neither arbitrary nor perverse. While endorsing the reasonableness of the enquiry report I hold that the minor punishment imposed by the 2nd Party on the proved charges is proportionate not warranting intervention in exercise of the jurisdiction vested with this Tribunal by sec 11-A of the Industrial Dispute Act. The workman is not entitled for any relief.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 30th October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1972.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्थल निदेशक राजस्थान परमाणु बिजलीघर, कोटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 3/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल–42012/107/2005–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1972.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2007)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of The Station Director , Rajasthan Atomic Power, Kota and their workmen, received by the Central Government on 07.11.2019.

[No. L-42012/107/2005-IR (CM-II)]

S. C. RAY, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 3/2007

राधामोहन चतुर्वेदी

पीठासीन अधिकारी

रेफरेन्स नं. L-42012/107/2005–IR(CM-II) दिनांक 30.06.2006

महासचिव, राजस्थान अणुशक्ति परियोजना कर्मचारी संघ (इंटक) रावतभाटा, वाया कोटा

बनाम

स्थल निदेशक, रावतभाटा राजस्थान साइट, अणुशक्ति कोटा राजस्थान

प्रार्थी की तरफ से : कोई नहीं

अप्रार्थी की तरफ से : श्री धर्मेन्द्र जैन –एडवोकेट

: **अधिनिर्णय** :

दिनांक : 9. 10. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 30.06.2006 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे आगामी चरणों में अधिनियम कहा जावेगा) की धारा 10 (2A) व (1) (d) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया :–

> "Whether the action of the management of RAPS, NPCIL, Rawatbhata in not awarding grace marks to Shri Shashi Kant Dashora, the workman, is legal and justified? If not, to what relief the workmen is entitled."

2. उपयुर्क्त संदर्भित विवाद प्राप्त होने पर उभयपक्ष को सूचना पत्र जारी कर आहूत किया गया। दिनांक 11.7.2007 को प्रार्थी की और से उसके प्रतिनिधि उपस्थित हुए और दावे को अभिकथन प्रस्तुत किया। प्रार्थी का कथन है कि शशिकान्त दशोरा सिनियर असिस्टेन्ट एक कान्ट्रेक्ट एवं मेटेरियल मैनेजमेन्ट (सी.एम.एम.) में कार्यरत है। प्रार्थी द्वारा सहायक श्रम आयुक्त केन्द्रीय कोटा के समक्ष एक विवाद प्रस्तुत करते हुए यह निवेदन किया गया है कि उसे लिखित परीक्षा में एक अंक की छूट प्रदान की जावें। लेकिन यह छूट नहीं दी गई जबकि पूर्व में कई कर्मचारियों को इस प्रकार की छूट दी गई। प्रार्थी ने पाठ्यक्रम बाहर से प्रश्न आने पर एक अंक का ग्रेस देने का निवेदन किया था। अन्य व्यक्तियों श्री पूतान सिंह तोमर एवं जैकब को विभाग ने सहायक प्रबन्धक परीक्षा में अनुत्तीर्ण घोषित किया था लेकिन अपील के बाद उन्हें 5 अंकों का ग्रेस मार्क्स देते हुए उत्तीर्ण किया और पदोन्नति भी दी गई। प्रार्थी एक अच्छा खिलाडी ओर समाज कल्याण गतिविधियों में भाग लेने वाला व्यक्ति है। लेकिन प्रबन्धन द्वारा भेदभाव पूर्ण व्यवहार करते हुए प्रार्थी का शोषण किया गया। अतः वाद स्वीकार कर प्रार्थी को एक अंक की छूट 1 जून 2002 को ली गई परीक्षा में प्रदान की जाकर उत्तीर्ण घोषित करते हुए सहायक प्रबन्धक (संविदा) के पद पर पदोन्नति का लाभ प्रदान करने का अधिनिर्णय पारित किया जावें।

3. दिनांक 21.5.2010 को विपक्षी ने प्रतिउत्तर में यह कहा कि अप्रार्थी संस्थान में सभी नियुक्तियां एवं पदोन्नतियां परमाणु ऊर्जा विभाग एवं न्यूकलियर पॉवर कार्पोरेशन ऑफ इण्डिया लिमिटेड द्वारा निर्मित नियमों के अधीन की जाती है। एन.पी.सी.आई. एल. द्वारा सहायक प्रबन्धक (संविदा) के पद हेतु लिखित परीक्षा का आयोजन किया गया था। सभी प्रत्याशीयों को लिखित परीक्षा के लिये 45 प्रतिशत अंक प्राप्त करना अनिवार्य था। प्रार्थी को पेपर 2 में 44 अंक प्राप्त हुए थे और वह अनुत्तीर्ण हुआ था। पूर्नमूल्यांकन में भी अंकों की गणना में कोई त्रुटी नहीं थी। अप्रार्थी संस्थान में लिखित परीक्षा में ग्रेस मार्क्स देने का कोई प्रावधान नहीं है। इसलिये प्रार्थी द्वारा प्रस्तुत यह वाद स्वीकार किये जाने योग्य नहीं है। प्रबन्धन द्वारा किसी कर्मचारी को ग्रेस मार्क्स नहीं दिये गये। अतः वाद निरस्त किया जावें। प्रार्थी ने प्रतिउत्तर के उपरान्त अतिरिक्त कथन भी प्रस्तुत कियें।

4. उभयपक्ष के अभिवचनों के उपरान्त दिनांक 6.1.16 को प्रार्थी की और से रमेश कुमार गौतम महामन्त्री कर्मचारी संघ का शपथ पत्र साक्ष्य में प्रस्तुत हुआ। किन्तु प्रार्थी पक्ष ने इस साक्षी को विपक्षी द्वारा की जाने वाली प्रतिपरीक्षा हेतु दिनांक 11.9.2019 तक भी प्रस्तुत नहीं किया। इस दौरान प्रार्थी पक्ष को चेतावनी सहित 2 बार अन्तिम अवसर भी प्रदान किया गये। लेकिन कोई परिणाम नहीं निकला। अन्ततः दिनांक 11.9.2019 को प्रार्थी की साक्ष्य का अवसर समाप्त करते हुए विपक्षी को साक्ष्य हेतु निर्देश दिये गये। किन्तु विपक्षी ने भी इस स्थिति में कोई साक्ष्य प्रस्तुत नहीं करना चाहा।

5. इस प्रकरण में प्रार्थी ने यद्वपि साक्ष्य हेतु रमेश कुमार गोतम का शपथ पत्र प्रस्तुत किया है किन्तु स्वंय को प्रतिपरीक्षा हेतु 3 वर्ष 6 माह की अवधि तक प्रस्तुत नहीं किया, इसलिये प्रार्थी की मुख्य परीक्षा का शपथ पत्र प्रतिपरीक्षा के अभाव में साक्ष्य के रूप में ग्रहण किये जाने योग्य नहीं है। साक्ष्य के अभाव में प्रार्थी पक्ष दावे के अभिकथन में वर्णित तथ्यों और मांगे गये अनुतोष की देयता प्रमाणित नहीं कर सका है।

6. प्रार्थी के साक्ष्य के अभाव में यह प्रमाणित नहीं हो सका है कि प्रबन्धन आर.ए.पी.एस. एन.पी.सी.आई.एल. रावतभाटा द्वारा श्री शशिकान्त दशोरा कर्मकार को अनुगृह अंक न दिया जाना अनुचित या अविधिकपूर्ण हो। प्रार्थी उसके साक्ष्य के अभाव में कोई अनुतोष पाने का अधिकारी नहीं है।

7. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु प्रेषित रेफरेन्स का उत्तर उपर्युक्तानुसार दिया जाता है।

8. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1973.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सहश्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 13/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.11.2019 को प्राप्त हुआ था।

[सं. एल–22012/63/2012–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1973.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2012)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L and their workmen, received by the Central Government on 13.11.2019.

[No. L-22012/63/2012-IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/13/2012-13 Date: 10.10.2019

The Sub Area Manager,
Padmapur O/c Mines of Chandrapur Area of WCL,
Post Padmapur, Distt-Chandrapur,
Maharashtra. **Party No.1**:

V/s

The Joint General Secretary,
Rashtriya Colliery Mazdoor Congress,
Vaidhay Nagar, Near Ayyapa Mandir,
Tukum Ward No. 2, Distt – Chandrapur
Maharashtra **Party No.2**:

AWARD

(Dated:-10th October, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of Padmapur O/c Mines of Chandrapur Area of Western Coalfields Limited and their Union, Rashtriya Colliery Mazdoor Congress for adjudication, as per letter **No. L-22012/63/2012-IR(CM-II) dated 24.07.2012,** with the following schedule:-

> **"Whether the action of the Management of Padmapur Open Cast Sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri. Sandeep the dependant son of Shri. Rustam Bhikaji Shirsat, Tyndle Jamadar who has already put in 35 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified? To what relief is the workman entitled to"**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union Rashtriya Colliery Mazdoor Congress ("The Union" in short) filed the Statement of Claim and the Management of Padmapur O/c Mines of Chandrapur Area of Western Coalfields Limited ("Party No.1" in short) filed its Written Statement.

3. Admitted facts of this case is that, Predecessor decide this case on 08-04-2013, which was remanded by Hon'ble High Court in writ petition No. 5029/14.

4. Union filed the statement of claim by asserting that, the Father of the Party No. 2 Shri. Rustam Bhikaji Sirsat was appointed with the respondent w.e.f. 19-02-1973, in the capacity of a General Mazdoor. Thereafter, he was promoted to the post of Tindal Jamadar. Lastly he was working in Padmapur Open Cast Mine of the Party No. 1. After rendering 35 years of continuous service he came to be superannuated on 30-09-2013.

5. According to the union, "clause 9.4.4 of National Coal Wage Agreement-III entered by the management with the recognized Union functioning with the Party No. 1. It is respectfully submitted that, as per Clause 9.4.4 of NCWA-III an employee who rendered for more than 35 years of his continuous services with Party No. 1, one of his dependent would be provided with the employment with the Party no. 1. Not only this, the Party No. 1 had also formulated a Scheme for employees dependent Employment Scheme".

6. According to the union, "The action on the part of the Party No. 1 in not providing employment to the petitioner No. 1 being one of the dependants of his father who put in continuous service for more than 35 years in their Padmapur Open Cast mine in Chandrapur area was not just and proper. Therefore, the father of the petitioner No. 1 with the help of his Union to which he was the member raised the Industrial Dispute before the learned ALC (C) at Chandrapur. However, no amicable settlement could be arrived at between the parties in Conciliation proceeding held before the ALC, Chandrapur".

7. According to the Union cause of action arose to the petitioner on 08-04-2013 the day on which the impugned Award by passed Tribunal and second cause of action arose on 28-06-2016 when Hon'ble High Court was pleased to pass an order dated 28-06-2016 and he prayed that, direct party No. 1 to provide employment to Party No. 2, Sandeep the dependant Son of Shri. Rustam Bhikaji Shirsat in view of the provision of Para 9.4.4 of National Coal Wage Agreement as per scheme of other reliefs as tribunal deemed fit.

8. On behalf of the management written statement was filed by admitting that, father of the petitioner was working with Party No. 1 and he retired from the service after attaining age of superannuation. According to them that, the Party No. 2 is seeking employment without following the procedure for getting employment and do want to compete with others for seeking employment, by relying on Clause No. 9.4.4 of National Coal Wage Agreement III and a Circular Dated 22-06-1977 issued by Bharat Coking Coal Limited.

9. According to the management, "The Party No. 1 is only bound by the Circular/s issued by Coal India Ltd. and is not bound by any Circular much less Circular dated 22-06-1977 issued by Bharat Coking Coal Limited. They also asserted that, Circular dated 22-06-1977 has never been accepted either by Coal India Limited or Party No. 1.

10. According to the Management, "the clause No. 9.4.4 of National Coal Wage Agreement III has been held to be unconstitutional and thus the Circular dated 22-06-1977 issued on the basis of Clause No. 9.4.4 of National Coal Wage Agreement III has also been declared unconstitutional" and prayed that, "the claim made by the Party No. 2 for seeking employment cannot be allowed and consequently the case as such filed by the Party No. 2 is liable to be dismissed with exemplary cost". They also prayed that, reference answered in negative.

11. Union filed rejoinder in same footing as a statement of claim by asserting that, 35 years service carrier of Shri. Rustam Bhikaji Shirsat is unblemished and he superannuated on 22-02-2011. According to them, petitioner entitled for employment as his dependant of Shri. Rustam Bhikaji Shirsat. Working condition of the WCL employee governed by NCWA-III. According to the Union Circular issued by the Bharat Coking Coal Limited is binding on Party No. 1. So Petitioner entitled appointment of compassionate ground also prayed that, submission made by the party No. 1 is not tenable.

Point of determination:-

1. "Whether the petitioner is dependant of Shri. Rustam Bhikaji Shirsat?"

2. "Whether the petitioner is entitled for appointment on compassionate ground?"

3. "Whether the petitioner is entitled to any other relief?"

Reason for decision:-

12. On behalf of the workman, it was argued that, the father of the Party no. 2 Mr. Rustam Bhikaji Shirsat was in the employment of the party No. 1 and put in more than 35 years of continuous unblemished services with them. He retired from his services on 30-09-2013 on attaining the age of superannuation in the capacity of General Mazdoor. It is also argued that, in view of clause 9.4.4 of National Coal Wage Agreement entered by the Party No. 1 with the recognized trade unions functioning with them. It is provided that where an employee retires from his service, after completing more than 35 years of services; his dependant is entitled for employment. According to the workman, management did not provide him employment, so he prayed that, workman is entitled for employment. This argument is denied by the management. Now, I want to see the argument of Party No.1.

13. On behalf of the Party No. 1, it was argued that, Party No. 1 is a subsidiary of Coal India limited and Coal India Limited is having various subsidiaries for the purposes of smooth running of affairs of Coal India Limited. Each subsidiary is registered independently under the provisions of Companies' Act of 1956 and is having independent Identity. So he further argued that, circular dated 22-06-1977 is not binding on Party no. 1, because it was issued by Bharat Cooking Coal Limited. Now, I want to see the evidence, which was produced by the Party No. 2.

14. On behalf of the Petitioner Mr. Sandeep was examined as PW-1 in support of his statement of claim. He filed evidence on affidavit by asserting all material facts to prove the statement of claim in his chief examination. He also asserted that, the clause of 9.4.4 of National Coal Wage Agreement-III i.e. NCWA-III, but Para-10 in his cross examination, he admitted that, he did not aware of the above clause 9.4.4 of NCWA-III and he also asserted that, whether this provision was in existence or not. It shows that, virtually he did not know the provision of NCWA-III as he stated in statement of claim and rejoinder. It also shows that, he has no legal knowledge. Now, I want to see legal position.

15. Both parties advocate (Petitioner's advocate and Party No. 1's advocate) relied on following case laws: (a) Yogendra Pal Singh Vs. Union of India (A.I.R. 1987 SC 1015), (b) Employee in relation to the Management of Bhowra Area No. XI of M/S. BCCL, Dhanbad Vs. Presiding Officer, CGIT, Dhanbad, W.P. (L) No. 2412/2002, Order dated 26-07-2012 and (c) Employers in relation to management of Bastacolla Colliery BCCL, Dhanbad Vs. Dy. Chief labour commissioner (c), Dhanbad and Others, W.P.(L) No. 5805/2010, High Court Jharkhand Order dated 31-08-2016.

16. Now, I want to see the principles laid down in the above case laws –

(a) (i) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (ii) No citizen shall, on grounds only of religion race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

(b) While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service. In Gazuila Dasaratha Ram Rao V. State of Andhra Pradesh (1961) 2SCR 931 : (AIR 1961 SC 564) the question relating to the constitutional validity of section 6(1) of the Madras Hereditary Village Offices act, 1895 (3 of 1895) came up for consideration before this Court. That section provided that where two or more villages or portions thereof were grouped together or amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined in section 3, clause (1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new offices which were created for the new village or villages should be filed up by the Collector by selecting the persons whom he considered best qualified from among the families of the last holders of the offices which had been abolished. This Court held that, the said provision which required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the constitution. The Court observed in that connection at pages 940-941 and 946-947 (of SCR) : (at Pp. 569-70 and 572 of AIR) thus.

(c) Article 15 is more general than Art. 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 is does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Art.16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to services or to provisions in the earlier Constitution Acts relating to the same subject…….(Pages 940-91) (of SCR): (at p. 569-70 of AIR).

(d) There can be no doubt that S. 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art. 16(2) of the Constitution. (pages 946-947) (of SCR) : (at p. 572 of AIR).

(e) The Employee is not entitled for such any relief in terms of in clause 9.4.4 of National Coal Wages Agreement upon which he relies as the same to the contrary to the specific provisions of part-III of constitution.

(f) However, it appears from perusal of judgment passed in the said case that the learned Single Judge of Patna High Court took note of the decision rendered by the Supreme Court declaring Clause 9.4.4 of NCWA-II as void and nonest in the eye of law and held that concerned workman did not have any legal right to get his ward appointed on attaining the age of superannuation. The reference made by the Central Government was held to be bad in law. However,

an observation was made thereafter that in case the son of the concerned workman is eligible, the management shall consider his case for appointment in any vacant post along with all other eligible candidates. Such an observation was made in exercise of the powers under Sections 226 and 227 of the Constitution of India by the High Court. Even going by the said observation in the facts of the present case, it cannot be alleged that the petitioner management has refused to consider the case of the workman despite being eligible for appointment against any post notified through open advertisement calling for applications from all other eligible candidate.

17. According to the petitioner, his father joined service in Party No.1 WCL on 19.02.1973 and superannuated on 30.09.2013. Petitioner applied for employment to the Party No.1 on 28.07.2011. NCWA is applied to both the parties from 11.11.1983 to 31.12.1986. Hon'ble High Court in case law; Bustacolla Colliery BCCL Dhanbad vs Deputy Chief Labour Commissioner Dhanbad, Honorable Jharkhand High Court on the basis of Apex Court in the judgment rendered in the case of Delhi Police Non-Gazetted Karamchari Sangh vs. Union of India reported in AIR 1987 SC 379 held that, provision of clause 9.4.4 of NCWA-III which in its term contained a policy decision of the management to provide employment to the dependents of the superannuated employee of the BCCL has been declared as ultra-vires by the Apex Court in the judgment rendered in the case of Delhi Police Non-Gazetted Karamchari Sangh vs. Union of India reported in AIR 1987 SC 379. Supreme Court declaring Clause 9.4.4 of NCWA-II as void and nonest in the eye of law and held that concerned workman did not have any legal right to get his award appointed on attaining the age of superannuation. The management shall consider his case for appointment in any vacant post along with all other eligible candidates. Such an observation was made in exercise of the powers under Sections 226 and 227 of the Constitution of India by the High Court.

In this way Hon'ble High Court as well as Hon'ble Supreme Court held that provision of 9.4.4 of the NCWA-III and circular dated 22.06.1977 issued by the Bharat Coking Coal Limited is ultra-vires, so in the light of above judgment, above principles are binding in the light of article 226 and 227 of the Constitution of India. Even going by the said observation in the facts of the present case, it cannot be alleged that the management has refused to consider the case of the workman despite being eligible for appointment against any post notified through open advertisement calling for applications from all other eligible candidate.

18. Judging the present case with the touchstone of principles laid down in the above case laws, it appears that, father of the petitioner was working in W.C.L. near about 35 years, but he did not suffer any injury as in employment, which might be caused his death. Party No. 1 i.e. WCL is a public limited company, which is governed by statutory rules framed by the Parliament or by the Central Government. Petitioner's case is not like that; his father was injured during employment, which might cause his father's death. The public employment must be fair and qualified person should come to work on such public post. In my opinion, he is not entitled any employment in Party No. 1's company due to dependent of Rustam Bhikaji Shirsat. So, in my opinion, petitioner is not entitled to any relief. Hence it is ordered:-

ORDER

The action of the Management of Padmapur Open Cast Sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri. Sandeep the dependant son of Shri. Rustam Bhikaji Shirsat, Tyndle Jamadar who has already put in 35 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1974.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–यहश्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 14/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.11.2019 को प्राप्त हुआ था।

[सं. एल–22012/71/2012–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1974.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2012*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L and their workmen, received by the Central Government on 13.11.2019.

[No. L-22012/71/2012-IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/14/2012-13 Date: 10.10.2019

The Sub Area Manager,
Padmapur O/c Mines of Chandrapur Area of WCL,
Post Padmapur, Distt-Chandrapur,
Maharashtra. **Party No.1**:

V/s

The Joint General Secretary,
Rashtriya Colliery Mazdoor Congress,
Vaidhay Nagar, Near Ayyapa Mandir,
Tukum Ward No. 2, Distt – Chandrapur
Maharashtra **Party No.2**:

AWARD

(Dated:-10th October, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of Padmapur O/c Mines of Chandrapur Area of Western Coalfields Limited and their Union, Rashtriya Colliery Mazdoor Congress for adjudication, as per letter **No. L-22012/71/2012-IR(CM-II) dated 24.07.2012,** with the following schedule:-

> **"Whether the action of the Management of Padmapur Open Cast Sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri. Mahendra the dependant son of Shri. Narayan Adku Sontakke, Electrician who has already put in 35 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified? To what relief is the workman entitled to"**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union Rashtriya Colliery Mazdoor Congress ("The Union" in short) filed the Statement of Claim and the Management of Padmapur O/c Mines of Chandrapur Area of Western Coalfields Limited ("Party No.1" in short) filed its Written Statement.

3. Admitted facts of this case is that, Predecessor decide this case on 08-04-2013, which was remanded by Hon'ble High Court in writ petition No. 5030/14.

4. Union filed the statement of claim by asserting that, the Father of the Party No. 2 Shri. Narayan Adku Sontakke was appointed with the respondent w.e.f. 20-11-1975, in the capacity of an Electrical Helper. Thereafter, he was promoted to the post of Electrician. Lastly he was working in Padmapur Open Cast Mine of the Party No. 1. After rendering 35 years of continuous service he came to be superannuated on 28-02-2011.

5. According to the union, "clause 9.4.4 of National Coal Wage Agreement-III entered by the management with the recognized Union functioning with the Party No. 1. It is respectfully submitted that, as per Clause 9.4.4 of NCWA-III an employee who rendered for more than 35 years of his continuous services with Party No. 1, one of his dependent would be provided with the employment with the Party no. 1. Not only this, the Party No. 1 had also formulated a Scheme for employees dependent Employment Scheme".

6. According to the union, "The action on the part of the Party No. 1 in not providing employment to the petitioner No. 1 being one of the dependants of his father who put in continuous service for more than 35 years in their Padmapur Open Cast mine in Chandrapur area was not just and proper. Therefore, the father of the petitioner No. 1 with the help of his Union to which he was the member raised the Industrial Dispute before the learned ALC (C) at Chandrapur. However, no amicable settlement could be arrived at between the parties in Conciliation proceeding held before the ALC, Chandrapur".

7. According to the Union cause of action arose to the petitioner on 08-04-2013 the day on which the impugned Award by passed Tribunal and second cause of action arose on 28-06-2016 when Hon'ble High Court was pleased to pass an order dated 28-06-2016 and he prayed that, direct party No. 1 to provide employment to Party No. 2, Mahendra the dependant Son of Shri. Narayan Adku Sontakke in view of the provision of Para 9.4.4 of National Coal Wage Agreement as per scheme of other reliefs as tribunal deemed fit.

8. On behalf of the management written statement was filed by admitting that, father of the petitioner was working with Party No. 1 and he retired from the service after attaining age of superannuation. According to them that, the Party No. 2 is seeking employment without following the procedure for getting employment and do want to compete with others for seeking employment, by relying on Clause No. 9.4.4 of National Coal Wage Agreement III and a Circular Dated 22-06-1977 issued by Bharat Coking Coal Limited.

9. According to the management, "The Party No. 1 is only bound by the Circular/s issued by Coal India Ltd. and is not bound by any Circular much less Circular dated 22-06-1977 issued by Bharat Coking Coal Limited. They also asserted that, Circular dated 22-06-1977 has never been accepted either by Coal India Limited or Party No. 1.

10. According to the Management, "the clause No. 9.4.4 of National Coal Wage Agreement III has been held to be unconstitutional and thus the Circular dated 22-06-1977 issued on the basis of Clause No. 9.4.4 of National Coal Wage Agreement III has also been declared unconstitutional" and prayed that, "the claim made by the Party No. 2 for seeking employment cannot be allowed and consequently the case as such filed by the Party No. 2 is liable to be dismissed with exemplary cost". They also prayed that, reference answered in negative.

11. Union filed rejoinder in same footing as a statement of claim by asserting that, 35 years service carrier of Shri. Narayan Adku Sontakke is unblemished and he superannuated on 20-02-2011. According to them, petitioner entitled for employment as his dependant of Shri. Narayan Adku Sontakke. Working condition of the WCL employee governed by NCWA-III. According to the Union Circular issued by the Bharat Coking Coal Limited is binding on Party No. 1. So Petitioner entitled appointment of compassionate ground also prayed that, submission made by the party No. 1 is not tenable.

Point of determination:-

1. "Whether the petitioner is dependant of Shri. Narayan Adku Sontakke?"

2. "Whether the petitioner is entitled appointment on compassionate ground?"

3. "Whether petitioner is entitled to any other relief?"

Reason for decision:-

12. On behalf of the workman, it was argued that, the Father of the Party no. 2 Shri. Narayan Adku Sontakke was in the employment of the party No. 1 and put in more than 35 years of continuous unblemished services with them. He retired from his service on 28-02-2011 on attaining the age of superannuation in the capacity of Electrical Helper. It is also argued that, in the view of clause 9.4.4 of National Coal Wage Agreement entered by the Party No. 1 with the recognized trade unions functioning with them. It is provided that where an employee's retires from his service, after completing more than 35 years of services, his dependant is entitled for employment. According to workman management did not provide him employment, so he prayed that, workman is entitled for employment, this argument is denied by the management. Now, I want to see the argument of management.

13. On behalf of the management, which was argued that, Party No. 1 is a subsidiary of Coal India limited and Coal India Limited is having various subsidiaries for the purposes of smooth running of affairs of Coal India Limited each subsidiary is registered independently under the provisions of companies' act of 1956 and is having independent Identity. So he further argued that, circular dated 22-06-1977 is not binding on party no. 1, because it was issued by Bharat Coking Coal Limited. Now, I want to see the evidence, which was produced by the Party No. 2.

14. Mr. Mahendra was examined (PW-1) on behalf petitioner in support of his statement of claim. He filed evidence on affidavit by asserting all material facts which alleged in statement of claim. He asserted in the para 3 of his chief examination that, "as per clause 9.4.4 of NCWA-III, an employee who rendered for more than 35 years of service, one of his dependant would be provided with employment provided that the dependant should be physically fit and suitable for employment," but Para-10 and 11 in his cross examination, he admitted that, "Reference has been made to Union, it is true to say that I have not obtained permission to file statement of Claim in individual capacity. WCL has invited application for job . I have not filed copy of advertisement on record. I have not filed any application on record to show that I had applied against advertisement",---------- "Document No. W-8 has not been issued by WCL and Coal India Ltd. I have no knowledge whether (this document Exh.W-8) has been quashed." Now, I want to see legal position.

15. Both parties advocates (Petitioners advocate and Party No.1's advocate) relied on following case laws. (a) Yogendra Pal Singh Vs. Union of India (A.I.R. 1987 SC 1015), (b) Employee in relation to the Management of Bhowra Area No. XI of M/S. BCCL, Dhanbad Vs. Presiding Officer, CGIT, Dhanbad, W.P. (L) No. 2412/2002, Order dated 26-07-2012 and (c) Employers in relation to management of Bastacolla Colliery BCCL, Dhanbad Vs. Dy. Chief labour commissioner (c), Dhanbad and Others, W.P.(L) No. 5805/2010, High Court Jharkhand Order dated 31-08-2016.

16. Now, I want to see principles laid down in the above case laws –

(a) (i) there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (ii) No citizen shall, on grounds only of religion race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

(b) While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service. In Gazuila Dasaratha Ram Rao V. State of Andhra Pradesh (1961) 2SCR 931 : (AIR 1961 SC 564) the question relating to the constitutional validity of section 6(1) of the Madras Hereditary Village Offices act, 1895 (3 of 1895) came up for consideration before this Court. That section provided that where two or more villages or portions thereof were grouped together or amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined in section 3, clause (1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new offices which were created for the new village or villages should be filed up by the Collector by selecting the persons whom he considered best qualified from among the families of the last holders of the offices which had been abolished. This Court held that, the said provision which required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the constitution. The Court observed in that connection at pages 940-941 and 946-947 (of SCR) : (at Pp. 569-70 and 572 of AIR) thus.

(c) Article 15 is more general than Art. 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 is does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Art.16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to services or to provisions in the earlier Constitution Acts relating to the same subject…….(Pages 940-91) (of SCR): (at p. 569-70 of AIR).

(d) There can be no doubt that S. 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art. 16(2) of the Constitution. (pages 946-947) (of SCR) : (at p. 572 of AIR).

(e) The Employee is not entitled for such any relief in terms of in clause 9.4.4 of National Coal Wages Agreement upon which he relies as the same to the contrary to the specific provisions of part-III of constitution.

(f) However, it appears from perusal of judgment passed in the said case that the learned Single Judge of Patna High Court took note of the decision rendered by the Supreme Court declaring Clause 9.4.4 of NCWA-II as void and nonest in the eye of law and held that concerned workman did not have any legal right to get his ward appointed on attaining the age of superannuation. The reference made by the Central Government was held to be bad in law. However, an observation was made thereafter that in case the son of the concerned workman is eligible, the management shall consider his case for appointment in any vacant post along with all other eligible candidates. Such an observation was made in exercise of the powers under Sections 226 and 227 of the Constitution of India by the High Court. Even going by the said observation in the facts of the present case, it cannot be alleged that the petitioner management has refused to consider the case of the workman despite being eligible for appointment against any post notified through open advertisement calling for applications from all other eligible candidate.

17. According to the petitioner, his father joined service in Party No.1 WCL on 19.02.1973 and superannuated on 30.09.2013. Petitioner applied for employment to the Party No.1 on 28.07.2011. NCWA is applied to both the parties from 11.11.1983 to 31.12.1986. Hon'ble High Court in case law; Bustacolla Colliery BCCL Dhanbad vs Deputy Chief Labour Commissioner Dhanbad, Honorable Jharkhand High Court on the basis of Apex Court in the judgment rendered in the case of Delhi Police Non-Gazetted Karamchari Sangh vs. Union of India reported in AIR 1987 SC 379 held that, provision of clause 9.4.4 of NCWA-III which in its term contained a policy decision of the management to provide employment to the dependents of the superannuated employee of the BCCL has been declared as ultra-vires by the Apex Court in the judgment rendered in the case of Delhi Police Non-Gazetted Karamchari Sangh vs. Union of India reported in AIR 1987 SC 379. Supreme Court declaring Clause 9.4.4 of NCWA-II as void and nonest in the eye of law and held that concerned workman did not have any legal right to get his award appointed on attaining the age of superannuation. The management shall consider his case for appointment in any vacant post along with all other eligible candidates. Such an observation was made in exercise of the powers under Sections 226 and 227 of the Constitution of India by the Hob'ble High Court.

In this way Hon'ble High Court as well as Hon'ble Supreme Court held that provision of 9.4.4 of the NCWA-III and circular dated 22.06.1977 issued by the Bharat Coking Coal Limited is ultra-vires, so in the light of above judgment, above principles are binding in the light of article 226 and 227 of the Constitution of India. Even going by the said observation in the facts of the present case, it cannot be alleged that the management has refused to consider the case of the workman despite being eligible for appointment against any post notified through open advertisement calling for applications from all other eligible candidate.

18 Judging the present case with touchstones of principles laid down in the above case laws, it appears that, father of the petitioner was working in W.C.L. near about 35 years, but he did not suffer any injury as in employment which may be caused his death. Party No. 1 is a public limited company, which is governed by statutory rules framed by the parliament or by the central government. Petitioner case is not that, his father was injured during employment, which might cause his father's death. The public employment must be fair and qualified person should come to work on such public post. In my opinion, he is not entitled any employment in party No. 1's company due to dependent of Shri. Narayan Adku Sontakke. So, in my opinion, petitioner is not entitled to any relief. Hence it is ordered:-

ORDER

The action of the Management of Padmapur Open Cast Sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri. Mahendra, the dependant son of Shri. Narayan Adku Sontakke, Electrician who has already put in 35 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1975.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सहश्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 233/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.11.2019 को प्राप्त हुआ था।

[सं. एल—22012/292/2002—आईआर (सीएम—II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1975.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 233/2003*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L and their workmen, received by the Central Government on 13.11.2019.

[No. L-22012/292/2002-IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/233/2003 Date: 28.10.2019

Party No. 1: The Sub Area Manager,
New Majri Open Cast Sub Area of WCL,
Post-Shivajinagar, Distt-Chandrapur (M.S)
Chandrapur (M.S).

V/s

Party No. 2: Shri Lomesh Maroti Khartad,
General Secretary,
National Colliery Workers Congress,
Dr. Ambedkar Nagar, Ballarpur,
Po & Tah. – Ballarpur,
Distt – Chandrapur (M.S).

AWARD

(Dated: 28th October, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of Western Coalfields Limited and their Union, National Colliery Workers Congress for adjudication, as per letter **No.L-22012/292/2002-IR (CM-II) dated 17.10.2003,** with the following schedule:-

> **"Whether the action of the management in relation to New Majri U/G Sub Area of WCL in converting Shri Jabed Mannan and 102 other Loaders as detailed in the list enclosed herewith without protecting their basic wages is legal and justified? If not, to what relief the workmen are entitled."**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union, National Colliery Workers Congress ("The Union" in short) filed the Statement of Claim and the Management of WCL ("Party No.1" in short) filed its Written Statement.

3. Union filed statement of claim through General Secretary by asserting that, the union is registered union under Trade Union Act 1923 having registration No. 3519 and is affiliated to National Front of Indian Trade Unions (NFITU). According to them, concerned workmen involved in the instant dispute were appointed as Piece Rated workers as Loader in Group V-A of NCWAs and some were appointed even prior to commencement of NCWAs. They have put in unblemished continuous service.

4. According to the union, workmen were piece Rated Loaders in group V-A wages inclusive of basic wages of 118 Cft,. Special Rate Allowance (which is a sort of increment as in case of Time Rated, monthly rated workmen and this SPRA is treated as basic wages), lead and lift (Which is also basic) besides underground allowance. They also asserted that, the Party No.1 converted Shri Jabed mannan and 102 other Piece Rated Loader Group V-A (of NCWA) to time rated categories and reduced their basic wages arbitrarily and did not protect their basic and "Special Piece Rate Allowances" and management reduced their basic wages and stopped payment of SPRA. According to union, they took up the matter at times without number with the management at different levels. The management neither replied nor considered their cases. According to them, the management, during the conciliation never denied that, the basic wages and SPRA of Loader Group V-A has been protected.

5. According to the union, failure of conciliation Ministry of Labour New Delhi referred the instant dispute for adjudication by this Hon'ble Tribunal. The union had apprehension that, the management will harass and victimize the workmen involved in the instant industrial dispute in numerous ways including illegal, arbitrary may transfer to very remote places. According to the union, the individual fixation chart of the concerned workmen are with the management, which they must submit to throw light on the issue failing, which adverse inference may kindly be drawn and the service conditions of the workmen are also governed by the certified standing orders. They also asserted that, under standing order 21:1 provided that, workmen may be transfer due to the exigencies of work from one coal mines to another.

6. According to the union, the memorandum of settlement was arrived under section 12(1) of the I.D. Act 1947 (in short "The Act"). On 2.11.1992, which is still in operation in to-to as the same has neither have been amended nor withdraw. According to them, management has not been protecting group wages and SPRA of Piece Rated Loaders who due to ill health has opted for light job in lower category, so they prayed that, reference will be decided in the favour of workmen and require the management to protect the basic and special Piece Rated allowances of Loader Group V-A as per NCWA application and during the relevant time and pay back wages difference arising out and consequent benefits. They also prayed for interest and litigation expenses.

7. Party No.1 filed written statement by denying all material facts, which is asserted in statement of claim and take a preliminary objection as the above union is not registered in WCL, because it is registered at Dhanbad in the state of Jharkhand, which is not supported by 25% of the workers of Ballarpur Area and the union had been putting up contradictory demands and union did not produce membership list of his union, so union should not be allowed to play the game of inter union rivalry at the case of the employers and the industrial peace, so union has no right to raise the existing dispute before this Tribunal.

8. According to Party No.1, WCL has set norms formulated on the basis of long standing practice, settlements and agreements and policy decisions which are well known to all, in terms of which piece-rated workers are assigned time-rated jobs. According to Party No.1, concerned workmen are performing the jobs of time-rated category as Loader, so it is not possible to give of higher wages on performance of lower jobs. They want both the advantages i.e. lighter job and higher pay.

9. Party No.1 admitted para 5 to 9 and part of para 4 of statement of claim, but rest of averments (facts) are denied by the Party No.1. According to them, alleged conversion had taken place during the year 1993 to 1997, so there claim is highly belated and ambiguous, so no cognizance could be given. They also raise objection that, employee did not raise their grievance with the Employer before complaining to their claim is premature and manipulated to harass the Party No.1.

10. According to the Party No.1 as regards individual pay fixation, as has been contended above and reiterated every workmen receives pay slip showing his wage details and this is his property. They also asserted that, document no.13 appears to be procured unauthorized or stolen from the employer's custody. According to them, the referred settlement was modified and made applicable from 31.10.1995, which is in force and has not been challenged or altered so far through the proper process of law, so they prayed that, concerned workmen are not entitled either for the protection of Group Wages or 10% interest thereon. They are also not entitled for Rs. 20,000/- (Rs. Twenty thousand only) as cost of the litigation. Party No.1 also prayed that, there is no merit in the claim of the union, so reference may be answered in favor of the employer.

11. Union also filed rejoinder to contradict material fact, which is raised by Party No.1 in their written statement. According to them, there is no recognized union in WCL and each NCWA are in sequence. They also asserted that, by the conversion of piece rated worker into time-rated worker they will not get financial benefit and special piece rated allowance is sort of annual increment. According to the union, management again discussed the conciliation settlement dated 02.11.1992 on 31.10.1995, where certain modifications were proposed, but R.L.C was not accepted their amendments, so they prayed that, submission made by the Party No.1 is not sustainable, so liable to be rejected.

12. Party No.1 also filed reply to this rejoinder by denying all of these facts in same footing as written statement. They also prayed that, adverse inference cannot be drawn against the employer in considering their entire submission.

Point of determination:-

1. "Whether the above workmen i.e. Shri Jabed Mannan and 102 other Loader worker converted piece rated to time rated is proper?"

2. "Whether workmen are entitled to pay protection?"

3. "Whether workmen are entitled to any relief?

Reason for decision:-

13. Union argued following facts in their written argument:-

i. That, "Out of 103 workmen, some of the workmen had chosen to avail the benefits from 01.04.2017 and waive off their earlier claims but to the utter surprise no workmen has filed any compromise deed or any application with that regard nor signed on in any such deed before this Hon'ble Tribunal. Therefore, on 27.09.2018 five workmen have filed application for setting aside/ recall the award passed on 20.08.2018 in the order sheet so far as workmen namely Shri Yakub Narasaya, Shri Jeet Bahadur, Shri Ambala R. Mallya, Shri Juthan D. Gajraj & Sudhakar Ziblaji Khamankar."

ii. That, "workman may be transferred due to exigencies of work from one Coal mine to another or from one establishment department/section to another within the same company--------the job should be of similar nature and as such he is capable of doing.-------this are exigencies of job required for maintenance or production and safety etc."

iii. That, "The workmen were placed time rated categories in large scale due to exigencies of job are requirement due to introduction of S.D.L., L.H.D. Machines and as such to fill up time rated vacancies, the management fitted them in difference time rated categories, which are having lower basic in fact the most of the cases the Group V-A basic and S.P.R.A. -------therefore, any action in contradiction to the above settled position is illegal and not maintainable. It is established law that the standing orders have statutory force."

iv. That, "the evidence of the witnesses remain unchallenged as the management failed to cross examine the witnesses though ample and fair opportunities provided/ given by the Hon'ble Tribunal. Therefore, whole evidence of the witnesses is admissible in evidence and so also all the documents are duly proved and exhibited before this Tribunal by the workmen."

v. That, "the workmen who were identically transferred have been granted pay protection of their erstwhile piece rated job. Such fact is clearly reflected in their pay slips and other document filed by the workmen on record. Thus, in this fashion, W.C.L. has adopted discriminatory, pick & choose tactics in the matter of granting pay protection to the workmen."

vi. That, "so far I to IX NCWAs have been signed by both the parties for different periods and are binding on Coal India Ltd and also argued that, the secretary JBCCI issued implementation instruction No. 26, dated 23.04.1984 on "Fixation Benefit to piece rated workers who are doing time rated job" and also argued that, the Party No.1 till ensure the minimum guaranteed benefit and fitment in the revised scales of pay as per clause 2:8 & 2:9 of NCWA-III respectively."

vii. That, "Workman also argued that, NCWA IV, V,VI, VII,VIII & IX and so on provision have been made to give minimum increase to all workmen over and above earlier wages fixed by preceding NCWA regarding increase of wages to piece rated Loaders (all the concerned workmen are piece rated loader group V-A. The minimum increase to be given to all employees i.e. piece rate, time rate and monthly rated in accordance with NCWA's."

viii. That, "the Party No.1 again discussed the conciliation settlement dated 02.11.1992 on 31.10.1995 when certain modifications were proposed. It was agreed that, an amendment would be moved before the R.L.C. (C) Nagpur. The record note of discussions was signed on 31.10.1995. However, it was never moved before the RLC (C) Nagpur for amendment----------that, the record note of discussions cannot supersede the Tripartite settlement dated 02.11.1992 and the National Coal Wage Agreements---------- Tub Loader who come to time rate as per option given them, will not get the benefit of their Basic Group wages (including special piece rate allowance), which is based on length of service as per NCWA's."

ix. That, "if midpoint in categories from category I to V is also given there will be loss workmen. The Office Order No. 405 dated 10/12.07.1999 in respect of Moti Tulsi and 46 other loaders regularized from 01.01.1999 are also enclosed in the record for the kind perusal of this Hon'ble Tribunal. No settlement and record note of discussion can curtail the basic wage of any employee."

x. That, "the pay protection of group wages to 14 loaders converted to time rate job who came on transfer from different units to Ukni mines, who were not given protection of wages of loaders have been subsequently protected by the Party No.1----------note sheet no.702 dated 13/14.04.1997"

xi. (a) That, "It is further submitted that, communication dated 27.05.2001 on the subject of wage protection on conversion of piece rated workers to time rated job was issued by the personnel manager (IR) Wani area to the Dy. Chief Personnel Manager (IR) WCL, Nagpur."

(b) "The Dumper Operator Trainees (Loaders) who were placed at Gondegaon Sub Area of Nagpur area WCL, were given protection of wages as approved by Director (Personnel) WCL, vide office order no. WCL/D(P)/SECY/38/51/281 dated 23.05.2000.

(c) "The entire workmen who have been converted from PR to TR/MR from 31.10.1995 and 01.11.1995 must be given protection of group wages and SPRA."

(d) "It is pertinent to submit that, the NCWA has not amended the wage structure other than in the NCWA, therefore any deviation from NCWA without amendment or modification by JBCCI, this cannot be interpreted unilaterally. That in continuation of NCWA of protection of group wages and SPRA to piece rated loaders retrospectively in terms of settlement dated 02.11.1992 and protection of wages of loaders by way of group wages and SPRA must be given to all piece rated workers in terms of settlement dated 02.11.1992 only."

(e) "Directors of WCL Board on 28.08.2010 for conversion of surplus PR loaders----------conversion of surplus piece rated workers according to their suitability, fitness and training need in various trades/grades in time rated category protecting their group basic wages and SPRA earned in line with directives on the issue."

xii. That, "the pay slip of two loaders whose basic wage and SPRA have been protected are also filed on record, the names of these loaders working under Chandrapur Area (WCL) are Shri, Suresh S. Jirapure and Nagendra E.Urade, posted in Area Head Quarter Chandrapur but they have been given basic of piece rated job."

xiii. It is submitted that, "Moreover this Hon'ble Court may kindly pay judicial notice that there are five major unions including RKKMS in the Coal industries including WCL, with whom, negotiations and settlements are being made by Coal Industry. So, any settlement arrived at by the Party No.1 of WCL, with only the RKKMS union cannot bind all the employees of WCL."

xiv. That, "the workman had never given their written option for their conversion from piece rated to time rated workers but their transfers were made by way of managerial decision."

In last they argued that, "the contents in the statement of claim and the rejoinder filed by the workman may kindly be read as part and parcel of the evidence and arguments."

14. On the contrary Party No.1 denied all arguments raised by the Union by filing written notes of argument in following way:-

i That, "the membership subscription of workmen deducted from wages of workmen and paid to the Union---------Hence National Colliery Workers Congress has no locus to raise the present Industrial Dispute."

ii In para 3 Party No.1 admitted that, "the workman in the list were loaders. Loaders are Piece Rated workmen which falls Group V-A of Piece rated workers of the employer----------these workmen were converted from Piece rated Loader to time rated category jobs during NCWA VI which was in operation 01.07.1996 to 30.06.2001."

iii NCWA-VI is quoted that, "the fall back wages is payable in case the Piece-rated workers fail to fulfill the work norms on account of factors for which they are not responsible and also argued that, "the last wage drawn, for the purpose of gratuity calculation is the average wages drawn in the last three months" and also argued That, "the wage of loader is not fixed one but vary as per h is performance i.e. the quantity of Coal he loaded."

iv "The performance of the job of the loader requires higher physical stamina and strength so at the younger age loaders were performing well. However when they grow in age they become unable to perform and their wage get reduced as wage is directly proportionate to outcome---------all the workmen in this case are converted from piece rated to time rated (daily rated) on their own request after 31.10.1995."

v That, "Because of the difficulty to carry out the loading and huge cost involved, the employer mechanized the loading process. This made the loaders redundant and requirement of time rated employees for the upkeeping and maintenance of machines------these deployment were done on the option of loaders--------however as per the modified settlement dated 31.10.1995 the loaders converted to time rated were fixed in the midpoint pay of the scale in which they were converted.

vi That, "the Apex JCC is a body consisting of Party No.1 and representatives of all operating unions including INTUC which is the signatory in the settlement dated 31.10.1995."

vii That, "the loaders converted to unskilled time rated post. The present dispute falls under this category------ Loaders who were having driving license were selected through internal notifications and trained them as per training and placement scheme, which was prevalent in 1990s and on successful training converted to dumper operator."

viii(a) That, "one of the union raised the dispute for pay protection of such loaders which was allowed by this Hon'ble CGIT in case no. CGIT/NGP/46/2005 (Award dtd.01.04.2013) observing that the workmen involved in the case was not converted to time rated-------writ petition No. 1538/2014 which was dismissed. Thereafter WCL filed a review petition---------Hon'ble High Court stayed the award passed by the Hon'ble CGIT.

viii(b) That, "in CGIT case no.23/2003 & 54/2005 this Hon'ble CGIT allowed pay protection to workmen who were converted from piece rated to time rated on medical grounds, which was challenged by the WCL in WP No.4335/2017 & 3907 of 2017. Hon'ble High Court pleased to stay both."

viii(c) That, "in writ petition 5981/2015 Hon'ble High Court, Nagpur Bench examined the issue that a loader of WCL who was converted into time rated post on the recommendation of Apex medical board of WCL is entitled for pay protection of his loader wages and answered that the petitioner is not entitled for pay protection."

ix(a) That, "pieced rated workmen who were converted to time rated even on medical ground were given midpoint of category in which they were given alternate job as per provisions' of modified settlement dated 31.10.1995.

That, "Since the application for alternate job given by the loaders is an option to go out of loaders job, no separate option is necessary. In this case the employees who were deployed in time rated job on the recommendation of apex medical board were given benefit of modified settlement dated 31.10.1995."

x That, "all other employees in the list were given their option for conversion to time rated job--------document produced by the Union is not showing the workmen in the list were put in the time rated job by managerial decisions i.e. without option or without going through a process of selection. All the workmen in the list were opted for time rated job or alternate job in place of loader job. Hence they are entitled for mid stage pay in the scale of pay of category in which they were deployed, not full pay protection of loaders as per settlement dated 31.10.1995 only."

xi It is also argued that this settlement is not declared in operative by any court of law and is still in operation. The workman is demanding pay protection, not demanding return to their original job. Workman is demanding light job in

comparison to loader job and asking pay of loader job, which cannot be allowed. The union in this dispute has no locus to raise objection on maintainability of the modified settlement dated 31.10.1995.

15. On behalf of workmen, Khalil Jakir Miya (P.W.1) and sudhakar Jivlalji were examined in support of the statement of claim. They filed chief examination evidence on affidavit and their affidavit were verified in the court, but Party No.1 did not cross-examine in court i.e. "No Cross Order" is passed. In their further chief examination they prove W-1 to W-20 documents. Party No.1 also did not produce any oral evidence, so their evidence unrebutted. Now I want to see the evidence. According to Khalil Jakir Miya there are 103 workmen who were employed by Party No.1. According to him, ''सेक्रेटरी जे बी सी सी आई, नेसनल कोल वेज एग्रीमेंट के बाद इम्लिमेंटसन इन्सटक्सन इसु करते हैं जरे बाधित करत है। in para 16 he asserted that, हम लोगों को कार्यकारी आवश्यकता एस डी एल मसीन लगाने के कारण कार्यकारी आवश्यकता के अनुसार एवं लोडर अतएव इन कारणों से काम पर लगाया गया। and also asserted that, some material fact in support of statement of claim and rejoinder and same way Sudhakar P.W-2 asserted in their chief examination which in form of evidence on affidavit. Their evidence remains unrebutted as stated above. Now, I want to see documents.

On perusal of the record, Exhibit W-5 to W-8 and W-36 they are extract of National coal wage agreement and standing order which was issued by Coal India Limited on the basis of joint party settlement between Coal Industries and 5 Central Trade Unions. According to Union there are 9 NCWA i.e. (NCWA-I to IX from 01.01.1975 to 30.06.2016). On perusal of the W-19 to W-31 it appears that, these documents concerned order or guidelines issued by the Party No.1 from time to time regarding the pay fixation of their employees and also guideline regarding conversion of PR worker for TR job.

16. On behalf of Party No. 1, in para 3 of their written argument they admitted that, all 103 workmen were loaders. Loaders are piece rated workmen which falls in group V-A of piece rated workmen of employer and also admitted that, these workmen were converted from piece rated loader to time rated category job during 01.07.1996 to 30.06.2001. According to them wages paid to loader were in proportion to the work load they complete i.e. 108 cft of Coal Loading. In this way it appears that, Party No.1 admitted that, NCWA applied them. According to Party No.1 settlement dated 02.11.1992 has taken place and after that, modification of this settlement took place on 21.10.1995. According to him, they issued the circular on 19.01.1987 regarding fixation of piece rated worker who has been granted alternate job. This argument was denied by workmen by asserting that, there are only the 1992 settlement and no further settlement were taken place on 31.10.1995. According to them this is only record notes of discussion which was not approved by the Regional Labour Commissioner so according to them it is not settlement in the eye of law (as per industrial dispute Act 1947 section 2 p).

17. On perusal of the document W-33(a) dated 21.02.1995 and W-33(b) dated 02.03.1995 it appears that, Party No. 1 issued a notice on 21.02.1995 to terminate the settlement dated 02.11.1992 which was withdrawn on 02.03.1995. On perusal of W-33(c) dated 31.10.1995 this is simply discussion between Party No.1 and union regarding the modification of settlement 02.11.1992 regarding piece rated worker to time rated (monthly rated) worker. In my opinion this is not settlement as prevailing provision of industrial dispute Act 1947 with two reasons namely one is that, it is not approved by the Regional Labour Commissioner secondly in this settlement only Party No.1 was gaining but worker loser. Normally settlements means both the parties are settle in midpoint of demand of both parties as per section 18 to 20 of I.D. Act. And in my opinion settlement dated 02.11.1992 (exh.W-28) is presently prevail between both parties.

18. On behalf of Party No.1, it was argued that, younger age loaders were performing well. However when they grow in age they become unable to perform, their wages get reduced because the wages directly proportionate to output. Hence there was a hue and cry from workmen and union to convert the loaders who were unable to perform well in to time rated category. On the perusal of the documents of the union i.e. W-11 to W-17, W-21 to W-25 and W-37 to W-40(a) it appears that, workmen as well as union raised their dispute before the Party No.1 time to time it also appears that, the union filed exh.W-41 to W-120 pay slip of the workers. On perusal of W-27(a) dated 29.08.2003 and W-27(b) dated 09.09.2003 in which pay protection was given to Shri Sitaram Jiwatu and Exh.W-31 dated 10.02.2000 shows that, wages of all the employees of Chandrapur area of WCL are protected even on their demotion.

19. According to union, Dumper operator Trainee (loaders) who were placed at Gondegaon Sub Area of Nagpur were given protection by order no. 38/51/281 dated 23.05.2000. According to him, the same line of workers who were converted from PR to TR from 31.10.1995 and 01.11.1995 must be protected all group wages and S.P.R.A. They also argued that, Party No.1 converted all surplus PR loaders in to the time rated category, according to them they did not gave option in converting lower wages. This argument was denied by the Party No.1 in para 12 and 13 of their written argument. They also filed some copy of the applications which shows the consent of the worker but that fact was not proved by the Party No. 1 by reliable evidence. Moreover on perusal of these consent of Prabhunath dated 15.09.1990 and 28.08.1990 respectively shows that he consented only for 15 days, (which is marked as Exh.C1 and C2 for convince of the court) and concerned intimation by medical department is C-3 and order issued in this regard is C-4, but in order dated 13.03.2001(W-10) shows that, wage protection was given to the dumper operators, it shows that, Party No.1 adopt pick and choose method regarding their employees. In my humble opinion, this is not expected from ideal employer i.e. Party No. 1.

20. On perusal of the record it appears that, three types of the worker which are converted from PR to TR on by consent, on the basis of medical board report and surplus of the strength on the basis of S.D.L. report (---------). On the perusal of W-1 to W-3 it appears that, some worker are converted from PR to TR on 21.04.1999 and 06.09.2000 on the basis of inspection of SDL report which shows that, strength of Loader is decreased but this order has not mentioned the basic in which wages they are transferred. They also not mentioned that, on which basis their wages are fixed. It also appears that, Party No.1 gave protection of some workers on the basis of union demand or medical ground. On the contrary Party No.1 filed list of daily rated employees which is marked as C5 but that is not proved by the Party No.1 in Tribunal, so it does not held to Party No.1, on the contrary adverse inference can be drawn against the Party No.1.

21. On behalf of Party No.1 it was submitted in para 10(a) of their written argument it was argued that, Hon'ble High Court in so many cases stay the proceedings of this Tribunal. According to them, they are similar matters. They also filed pursis I.A.No.22 on 17.01.2019 by asserting that, Hon'ble High Court admitted writ petition 1538/2014 and granted stay the proceedings. This argument is opposed by the union by asserting that, "the order is not connecting with this case nor are these workers party to the writ petition." On perusal of the order of Hon'ble High Court dated 07.07.2017, 25.07.2017 and 09.10.2017 it appears that, Hon'ble High Court stay to the concerned award proceeding is not proceeding of this court. In my humble opinion argument of Party No.1 is not sustainable.

22. On behalf of Party No.1, it was argued that, workman is not member of the union, so union has no locus standy and this reference is not maintainable. This argument was opposed by the union by asserting that, union is registered under Trade Union Act, which carries registration no. 3519 and also asserted that, present workmen are members of this union and they also filed original counter foil of the union membership of the concerned workers as Exh.W-35. Moreover this reference came from Competent Authority i.e. Ministry of Labour and Employment and after completion of conciliation proceeding, which is conducted by R.L.C. In my opinion it is the duty of R.L.C. to see that whether union is registered or not, but after receipt of reference, this Tribunal is duty bound to answer the above. So, argument of Party No.1 is not sustainable. Now, I want to see the legal position.

23. Case Laws:-

1. The employer cannot enter into an agreement with a workman which is inconsistent with the Standing Orders of the company. The terms of the Standing Orders would prevail over the corresponding terms in the contract of service. While the standing orders are in force it is not permissible for the employer to seek their statutory modifications so that there can be one set of standing orders in respect of certain employees and another for the rest.

2. While adjudging the fairness or reasonableness of nay Standing Order, the Certifying Officer should consider and weigh the social interest n the claims of the employer and the social interest in the demands of the workmen. Section 10 provides the mode of modifying the Standing Orders. The employer or the workman may apply to the certifying Officer in the prescribed manner for the modification of the Standing Orders.

3. After expiry of the specific period contractually or statutorily fixed as the period of operation of an award or settlement, the same does not become non est but continues to be binding. Law abhors vacuum. Until a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. The precedents on the point, the principles of industrial law, the constitutional sympathy of Part-IV and the sound rules of statutory construction converge to the same conclusion.

4. The soul of the statute is not contract of employment, uniformity of service conditions or recruitment rules, but conscionable negotiations, conciliations and adjudications of disputes and differences animated by industrial justice, to avoid a collision which may spell chaos and imperil national effort at increasing the tempo of production.

5. It is an integral, holistic and delicately balanced ensemble of clauses, with cute calculations and hard bargaining on many matters. To dissect is to murder, in the art of true poetry as in the craft of settlement in industry.

6. One arm of employee amputated due to Sarcoma (Cancer)---- Employee unable to perform duties of post he was holding---Employee transferred to lower pay-scale---Not proper—Every endea vour must be made to adjust him in a post where he could suitably discharge his duties, protecting his last drawn salary.

7. A disabled person cannot be completely invalidated from service—There is statutory bar—He has to be provided with some alternate suitable job so that his right to live is not taken away.

8. Industrial Disputes Act, 1947---Section 18(3) ---settlement within the meaning of section 18(3) – Binding on both the parties----And continues to remain in force unless the same is altered, modified or substituted by another settlement------An employee acquires disability during the service---Rights of disabled employee—Loss of vision—Appellant was not aware of any protection under the Law—It was the duty of the Superior Officers to explain to the employee the correct legal position and to tell him about his legal rights—To threw an employee out of service by picking up a sentence from his letter completely out of context—The action of the officers concerned was deprecatable.

9. Compulsory retirement—Medical grounds—Petitioner a Bus Driver suffered the disease while serving the Department—Desease being attributable to service, he cannot be deprived of the benefits which otherwise would have occurred to him in vies of Section 47(1) of the Act-Except the bald denial, the Department has not placed any evidence or report on record to establish that in fact some exercise was carried to rehabilitate the petitioner on suitable post.

10. Specifically restricts the department from retiring any disabled person on any ground but to deep them on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier—Therefore, practically, when petitioner has been disabled during his service as per the second proviso of Sub-Section (1) of Section 47, when it is endorsed by the department that it is not possible to adjust the petitioner against any post, the department has to keep him in a supernumerary post until a suitable post is available or till he attains the age of superannuation, whichever is earlier—No G.R. can supersede the provisions of any enactment in any manner whatsoever—thereby, if any G.R. is not in conformation of any statutory provision, then, those G.R.s need to be ignored.

11. Petitioner appointed as jail warden, met with an accident suffered 90% disability was retired from service on basis of unfit certificate—Later was reinstated in service as a diary dispatcher with all consequential benefits except arrears of salary for the period that he remained out of service, such arrears being denied on the principal of "no work no pay".

12. No discrimination is permissible to the persons suffering disability during service—They cannot be deprived of the service or any benefit of service on account of their disability –The employer has to take appropriate action either to shift him to some other suitable post in the same pay scales and service benefits or he has to be kept on supernumerary post till a suitable post becomes available or attains age of retirement.

24(a) Now, I want to see the applications (I.A.No. 10, 11 and 23) filed by parties regarding the partial compromise on behalf of 58 workmen as a form of withdraw of the reference by the consent of the both parties and "No dispute award" was passed on 20.08.2018 by this Tribunal, which was challenged by filing I.A. No. 10 by 5 workers namely (i) Yakub, (ii) Jeet Bahadur, (iii) Ambala, (iv) Juthan & (v) Sudhakar and I.A. No.11by the Party No.1. According to I.A.No.10, they did not sign on withdrawal application nor they authorized advocate Shri. K.K. Yadav, which was denied by union representative of the National Colliery Workers Congress, Mr. K.K. Yadav. According to him he is Working President of the union and the union authorized him to participate and conduct the case proceedings on behalf of the union. He also argued that, these 5 workmen did not come before case proceedings nor they assist to conduct the case proceedings. On perusal of the records, it appears that, this reference received from ministry regarding 103 workmen, individually worker did not file or sign on authority letter/vakalatnama, statement of claim and rejoinder. This order was passed with the consent of management and union, so in my humble opinion, above 5 workmen is not entitled to withdraw the legitimate order passed by this Tribunal on 20.08.2018. So, application I.A. No.10 is rejected.

24(b) Management also filed I.A. No. 11 with prayer to recalling/setting aside award dated 20.08.2018 on the ground that, 5 workers prayed for withdraw the award (through application I.A.No. 10). According to them, it requires evidence to decide the application of 5 workmen, because Party No. 1 has already acted upon this award dated 20.08.2018. He also argued that, "Hon'ble High Court has stayed the order of this Tribunal and has admitted the said petition." This application was opposed by the union representative and advocate of above 5 workmen, who filed I.A. No. 10 by giving joint say, "the present workmen are not party in W.P.No.-1538/14 and therefore this matter cannot be stayed--------Only to prolong the matter this application is moved even management has not complied order passed by the Tribunal."------ Heard both parties on this application. Management did not challenge the order dated 20.08.2018 on the ground of genuineness and legality. They also not challenged this order regarding consent of parties at the time of passing the order. So, application I.A. No. 11 is rejected, because it has no legal force.

24(c) I.A. No.23 application has been filed by the union representative/Working President Mr. K.K. Yadav on 03.10.2019, in which he prayed that, payment of arrears order dated 13.08.2018 regarding withdrawing the case on behalf these 58 workers. This application was opposed by 5 workmen, who filed I.A. No. 10. On behalf of the management they gave say, "Appropriate order be passed in the interest of justice." Heard both parties on this

application. Ongoing above discussion, my humble opinion is that, order dated 20.08.2018 is complied by the management, because this order was passed with the consent and presence of both parties and this order has not been challenged before any competent Court or Hon'ble High Court.

24(d) On behalf of LR's of Ambala Malaiya, his advocate Shri S.N. Singh filed **pursis I.A. No.24** without application, death certificate and condonation of delay application. Now, I want to see the legal position regarding abatement of suit. So far as the deceased plaintiff is concerned, on the basis of case laws of the **Hon'ble Supreme Court** :- Kanhaiyalal vs Rameshwar,AIR 1983 SC 503, Shrikrishna Singh vs. Mathura Ahir and others AIR 1980 707, Puran Singh & others vs. State of Punjab & others AIR 1996 SCC 1092 and Mangal Singh vs. RAttno, AIR 1967 SC 1786, **laid down following principles**. [Book of Civil Procedure Court Eighth Eddtion Published by Eastern Book Company on page 376-378]----

Where the plaintiff dies after hearing and before pronouncement of judgment, the suit shall not abate. -----The same principle will apply in case of death of the plaintiff after passing of preliminary decree and before final decree. ---- Once final decree was passed, the rights of the parties are adjudicated and the question is only of execution of the decree. The provisions relating to abatement do not apply to execution proceedings.

When a party to a suit dies, the first question to be decided is whether the right to sue survives or not. If it does not there is an end to the suit. If it does, the suit will not abate. It can be continued by or against the heirs and legal representatives of the deceased party.

The general rules are that all rights of action and all demands whatsoever, existing in favour of or against a person at the time of his death, survive to or against his representatives. But in cases of personal actions, i.e. actions where the relief sought is personal to the deceased or the rights intimately connected with the individuality of the deceased, the right to sue will not survive to or against his representatives.

Management relied on case law:-

Lakhan s/o Pyarelal Daheriya vs. WCL Nagpur, W.P.No. 5981 of 2015 dated 06.10.2016 of Hon'ble Bombay High Court Bench Nagpur, in which following principles are laid down.-----

The petitioner has claimed to have suffered an injury in the mine accident is not brought on record. Also, there is no certificate on record, even a certificate of any Medical Board much less a Competent Medical Board that the petitioner had suffered a disability as defined by the Act of 1995. The petition suffers from laches and it would not be proper to grant the prayer made in writ petition, specially when the petitioner has not explained the delay, much less satisfactorily. The judgment reported in AIR 2003 SC 1623 and relied on by the counsel for the petitioner cannot be made applicable to the facts of this case.

This reference was referred by the Ministry regarding 103 workmen on 17.10.2003. As discussed above individual worker is not party in this case and they are not individually participate, but this matter was conducted by the union representative. For deciding the application of the representative, some documents are required, as date of death and knowledge of the applicant. It is also required a declaration on behalf of present LR's that, no other person is legal representative of deceased. This case is related to pay protection and workmen are directly financially affected of their wages. So, pursis I.A. No.24 has no meaning, because case is already fixed for award. Tribunal can consider all these facts at the time of passing the award, so accordingly pursis I.A.No.24 is taken in notice.

25. On behalf of the union, pursis (IA No. 21) was filed on 26.09.2019 giving list of the workers with retirement age, date of appointment and date of reduction of their wages and other information with the compliance of the order of this Tribunal. Copy was also served on 26.09.2019 to the Party No.1. Reference order also disclosed the list of workers, which shows that, on which month, the wages of the workmen were reduced and this fact has not been disputed by the Party No.1. So it appears that, Party No.1 has no objection regarding the particulars of workers filed by the union as well as Ministry. On above discussion, I have also observed that, settlement dated 02.11.1992 is applicable to the parties.

26. Judging the present position and touchstone of above case laws, it appears that, 103 workmen i.e. loaders working under Party No. 1, raised the dispute regarding the protection of their basic wages. On perusal of the record it appears that, they were appointed by the Party No.1. More than 3 workmen retired namely, Vasant Pandurang, Salim Shah and Khalil Mirza. Juthan Dharamdeo and Sudhakar are on roll. It also appears that, wages of workmen were reduced by the Party No.1 during the service. So in my opinion, role of Party No.1 is not like ideal employer, because they have not treated the workers in same way. They adopted pick and choose method, regarding protection of the wages. They did not file documentary and oral evidence regarding option or consent of the workers. It also appears that, workers were working near about 20 to 30 years with Party No.1. I also failed to understand, why these workers were not protected by their wages. It also appears that, they were poor fellows and they had liabilities of their family and mostly were illiterate, so in my opinion, they required protection of their wages under the settlement dated 02.11.1992. Hence it is ordered.

ORDER

The action of the management in relation to New Majri U/G Sub Area of WCL in converting Shri Jabed Mannan and 102 other Loaders as detailed in the list enclosed herewith without protecting their basic wages is not legal and justified. Workers are entitled to the protection of their wages and also entitled arrears from the date of reduction of their wages. Management is directed that, they shall pay the difference of wages as arrears, within 1 month from the date of publication of this award.

Retired workers are also entitled to protection of their wages. In case of death of workmen, their legal heirs are also entitled to the wage protection, as per law. Failing to which, amount due to the workman, will carry interest of 6% per annum from the date of amount due to the workman to the date of actual payment of the amount. The workmen are not entitled to any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1976.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सहश्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या सी.आर 27/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.11.2019 को प्राप्त हुआ था।

[सं. एल–22012/169/2001–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1976.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CR 27/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour, Bangalore as shown in the Annexure, in the industrial dispute between the management of M/s Food Corporation of India and their workmen, received by the Central Government on 06.11.2019.

[No. L-22012/169/2001-IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT , BANGALORE

DATED : 31ST OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 27/2002

I Party	**II Party**
The Organising Secretary, FCI Loading & Unloading Workers Union, No. 826/A, I Floor, 5th Main, Vijayanagar, Bangalore - 560 040.	The Sr. Regional Manager, Food Corporation of India, Regional Office, No. 10, Pallavi Complex, Kalinga Rao Road, Bangalore - 560 027.

Appearance

Advocate for I Party : Mr. K.T. Govinde Gowda

Advocate for II Party : Mr. B.L. Sanjeev

AWARD

The Central Government vide Order No. L-22012/169/2001-IR(CM-II) dated 03.06.2002 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the claim of the FCI Loading & Unloading Workers Union for the payment of increased tender rate of Wages for the earlier period in respect of White-Field (Bangalore) and Unkal (Hubli) depot is legal and justified? If yes, to what relief the workmen are entitled to?"

1. The cause of loading and unloading workers working with the 2nd Party is espoused by the Union. It is stated that the 1st Party Union challenged the termination of service of the 1st Party workmen by the Contractor before the Hon'ble High Court in W.P. No. 3460/1986. The Writ Petition was allowed directing the 2nd Party to treat the writ petitioners who were refused employment by the Contractor / S.S.K.T Company as its workmen, on the same terms and conditions of the service mentioned in the settlement arrived between the Union and the Contractor. It was also directed that the provisions of sec 25F and N of the Industrial Dispute 1947, should be complied if the workers have to be retrenched. The judgment is reported in 1987 (1) LLJ pg 407. The Management preferred appeal in Writ Appeal No. 939/1986, the Writ Appeal was disposed on 01.08.1995 directing the 2nd Party to absorb and regularise the workers w.e.f 01.11.1990 in view of Prohibition of Contract Labour System by the Central Government vide order dated 01.11.1990. The judgment was challenged by the management before the Apex Court in Special Leave Petition which came to be rejected on 29.01.1996.

2. It is further stated that, in the above scenario the 2nd Party management requested the godown workers for executing the handling and transportation work through their co-operative society i.e. Karnataka Contract Labour and Transport Co-operative Society Limited; they had agreed to extend various benefits to the workers through the co-operative society for two years at the initial stage, to be extended for further period. The workers have executed the work through the Workers Co-operative Society but the management failed to pay increased H&T tender rate as well as additional benefits. The 2nd Party had agreed to pay handling rate wages under schedule of rates ASOR once in two years and it is the usual custom and usage to increase the tender rate wages once in two years. Vide its circulars, they had agreed to extend additional benefits through the said Co-operative Society Limited, but did not comply the same.

3. It is further stated that the 2nd Party is liable to pay increased tender rate from 01.09.1995 to 12.07.1996 for a period of 10 months to a tune of Rs. 65,85,980/- as calculated at the average increased rate of tender wages for earlier tender period. They are liable to increase tender rate wages to FCI Hubli-Unkal Godown Workers from 01.06.1996 to 07.10.1996 amounting to Rs. 10,05,025/-.

4. The counter case of the 2nd Party is,

the reference is bad in law, the concept of 'Tender Wages Rate' is not maintainable under the Industrial law; they can claim any of their relief against the society which has engaged its members for the work; there is no relationship of employer- employee between those workers and the 2nd Party. At the time of entrusting the H&T work to the 1st Party Union Members Society at the Godowns, the 2nd Party had agreed to pay the handling rate of wages to the workers through the co-operative society under schedule of rates ASOR; said ASOR rate is a composite rate for the contract, no separate agreement is entered concerning the wages separately. An agreement for contract by way of ASOR is entered with Co-operative Society only; the 1st Party union receives the remuneration and disburses the same to its workers / members. As per the tender agreement the 1st Party Union should pay not less than minimum rates of wages existing at the time of inviting tenders. Now it is the duty of the union to determine the quantum of wages to each category of workers; FCI has no say on that except to ensure that they have made payment under Payment of Minimum Wages Act. Under the contract the 1st Party Union is expected to maintain record of wages paid date wise, week wise and monthly wise. The calculation arrived at Rs. 10,05,025/- towards the arrears is totally wrong and baseless. In the absence of an escalation clause in the contract the 1st Party is debarred from making any claim over and above the agreed rate.

5. It is further contended that the Society was Awarded contract for a period 01.09.1991 to 31.08.1993 and from 01.09.1993 to 31.08.1995 and they are given all benefits as per the circulars. Before Awarding contract for the period 01.09.1993 to 31.08.1995 negotiations were held with the President of the Society, the society quoted 850% hence the negotiation failed, still the society agreed to continue the work for another one month at the alleged rates of 300% ASOR. However, during the subsequent negotiation society agreed for 435% ASOR, accordingly contract was awarded for the period 01.09.1993 to 31.08.1995. Additional benefits referred to in the circulars are also extended to the workers; contract is awarded for Whitefield workers and K.R Puram at the rate of 435% ASOR and for Unkal at 298% ASOR. Now it is not open for the 1st Party to raise the issue for higher wage and additional benefit. Vide circular dated 22.11.1996 concessions given to the labour co-operative societies stood withdrawn and tender notifications are issued by the Regional Office inviting tenders for entrustment of contract in respect of handling of food grains at three places K.G.F, Bangarpet and Bommarpur.

6. It is further stated that the Policy Decision of 19.01.1989 and 16.09.1989 of handling contracts only to the labour co-operative society was amended by the New Policy Decision adopted on 19.10.1996 thereby to invite tenders from the open market in respect of contract at the godowns of K.G.F, Hubli, Mysore, Maddur, Bellary, Gangavathi, Raichur, Shimoga, Hassan and Hubli. The Hon'ble High Court in Writ Appeal No. 5365-85/98 has not intervened in respect of new policy decision of 19.10.1996. As long as the policy decision of 19.10.1996 is not interfered by the

judgments of the Court the same will hold the feel and the handling contracts can be awarded only in terms of the said resolution. Subsequently tenders are invited from the open market and the contractors have participated in the tender and are carrying out work at the places where they have been Awarded contracts as per the tenders. The claim is liable to be rejected.

7. Both parties have adduced evidence and the 2nd Party has filed their written arguments.

8. The witness examined for the 2nd Party is their Area Manager / MW-1, through him the circular dated 19.01.1989 of the FCI abolishing the Contract Labour System, the circular of 27.01.1994 and copy of the order passed by the Hon'ble High Court in Writ Appeal Nos. 5365-5385/1998 are marked as Ex M-1 to Ex M-3.

On behalf of the 1st Party their Secretary was the sole witness, the relevant document Ex W-1 to Ex W-6 were marked. During the cross examination of WW-1 he admits that the tender will be called form the contractors once in two years and no agreement has taken place between 01.09.1995 to 11.07.1996 between the Contractors and FCI; wages are fixed in the agreement between the Contractors and FCI.

9. During the cross examination of MW-1 10 undisputed documents were got marked for the 1st Party as Ex W-1 to Ex W-10. It was elicited from him that from 01.09.1991 till 12.07.1996 Handling and Transport work at Whitefield FCI godown was entrusted to the society; from 01.04.1992 to 07.10.1996 the said work at Unkal and Hubli was entrusted to the very same society. In respect of the tender rate wages pertaining to the society, negotiations will be held; some additional benefits are given to the members of the society through various circular by the Higher Management; for the period 01.09.1993 to 31.08.1995 the rate of contract was 435% ASOR, on 23.06.1995 the management addressed a letter to the society for their willingness and continuation of contract at Whitefield for the period 01.09.1995 to 31.08.1997 at the same 435% ASOR (as per Ex W-5) In response to the said letter negotiations commenced between the society and the 2nd Party for fixing the tender wages, while the negotiation was going on contract work continued; after completion of the negotiating, the society submitted its justification for its demand at 883% as per FCI circulars or 1893% ASOR without additional benefits dated 06.01.1996, no revision was made on those representations; the contract period commenced from 01.09.1995 and came to end on 12.07.1996 due to Direct Payment System as per the direction of the Hon'ble High Court; the first block period at Unkal and Hubli godown commenced from 01.06.1992 to 31.05.1994, the rate of contract raised from 84% ASOR to 136% ASOR, for the second block from 01.06.1994 to 31.05.1996 it raised from 136% ASOR to 298% ASOR which works out to an average rise of 65.5%. The witness during his cross examination admits the suggestion that the contract rate should have been increased for the third block which commenced from 01.06.1996 came to an end on 07.10.1996 in view of the introduction of Direct Payment System.

10. The basic question that arises in the circumstance is, there is no documentary proof to establish that the society i.e. Karnataka Contract Labour and Transport Co-operative Society Limited had approached the Union seeking their intervention for rise of their wages for the above period. Both are separate legal entities though their members are common. Admittedly the negotiation commenced with the management but did not conclude. The material particulars as to the number of workers, the days of their performance, duration of their working hours is not furnished. The dispute is raised by the society in the year 2002 after a long gap of 5 years; no document is produced demonstrating that a resolution was passed as per procedure to espouse the cause of the workmen who are the members of the society. Though much is brought on record about the multiple litigations pending consideration between the parties, for the purpose of adjudication of this petition, what draws my attention is, along with the claim petition no particulars of concerned workmen, documentary proof of a valid espousal in their favour is not produced. Identity of the workmen who are entitled for the relief under the demand is uncertain. That comes in the way of this Tribunal to uphold their demand as legal and justified.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 31st October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1977.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 40/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल—20012/433/1993—आईआर (सी—I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1977.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 40/1996) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.11.2019.

[No. L-20012/433/1993-IR (C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 40/1996

Employer in relation to the management of Bhalgora Area of M/s. BCCL.

AND

Their workmen

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For Bhalgora & Kustore Area : Sri A.K.Mehta & Sri N. M. Kumar, Advocate

For Kusunda Area. : Sri N.M. Kumar, Advocate

For Koyla Bhawan (HQ) : Sri Naresh Kumar. Asstt. (Legal)

For workman : Sri D. Mukherjee, Advocate

State : Jharkhand. Industry:- Coal

Dated 22.10 .2019

AWARD

By Order No.L-20012/433/1993-IR(C-1) dated 25/31.07.1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the claim of the union that S/Shree Gorelal Paswan and 32 others (as per list enclosed) were working at Burragarh siding as shale picker since 1988 under Chhotanagpur Motor Paribahan Sahayog Samity Ltd., Kusunda is correct? If so, whether the demand of the union for their regularisation by the management of Bhalgora Area of M/s. BCCL is justified? if so, to what relief are the concerned workmen entitled?"

2. The Tribunal in this matter has passed an award on 31/05/2012 holding that the demand of the union for regularization of the concerned workmen is not justified and the workmen being aggrieved by the said award filed a writ petition bearing WP (L) No. 6376/2012 before the Hon'ble Jharkhand High Court. The Hon'ble Jharkhand High Court has been pleased to set aside the said award and has been pleased to remand the matter for passing fresh award after due appraisal of the evidences already on record.

3. After production of the order of Hon'ble High Court passed in WP(L) No. 6376/2012, both the parties were noticed and subsequently they appeared before the tribunal and the matter was again heard.

4. The case of the concerned workmen as per their written statement is as follows:-

That they had been working at Burragarh siding of M/s. BCCL as shale picker since 1988 and they were engaged by the management of BCCL for improving their quality and regular dispatch of coal. The equipments and other material for doing the said job were provided to them by the management of the BCCL and the job of the workmen was permanent in nature as the Coal Wage Board Recommendation categories their job in Sl. No. 17 of Appendix V, so they were entitled to be regularised in Category 1. They had been under the direct control and Supervision of the Manager, Assistant Manager and Loading Inspector and other Supervisory staff of the colliery and they had been provided mining shoes and helmets by the management of the colliery like other regular employees. They had also been provided Cap Lamps by the management when they are requested to work in 2nd shift and night shift. Their attendance were being marked by the management in the Form 'C' register which was a statutory register. The management of Burragarh Colliery of M/s. BCCL had deputed various unauthorised devices for engagement of workmen on various productive and regular work and not showing them as departmental workers, so as to deprive them of their legitimate rights arising out of various Awards and National Coal Wage Agreement. The Cooperative Societies had been formed at the instance of Management to show the employment of some workmen including these concerned workmen as to the worker of societies only to deprive them of other legitimate benefits. They had been shown as being employed by Chhotanagpur Motor Paribahan Sahayog Samity Ltd. whereas in fact the said Samity had no control over their employment and had no machinery and means to supervise their work so their arrangement of employment through Sahayog Samiti was camouflage. The Chotanagpur Paribahan Sahayog Samiti Ltd. could not be considered as an independent contractor employing the concerned workmen. They had completed more than the 240 days of continuous and regular service each year since they had been working in Burragarh Colliery Mines and the BCCL. and in many cases M/s BCCL had departmentalized and regularised the services of workmen during the job similar to them. They had been requested the management of Burragarh Colliery of M/s. BCCL to regularise their services on the roll of Burragarh Colliery but the management did not make their services regular. Thereafter they had raised the present Industrial Dispute which resulted reference to this Hon'ble Tribunal. A prayer has been made to pass Award in their favour.

5. On the other hand the case of the management/employer Burragarh Colliery, Bhalgora Area as per its written statement is as follows:-

That no employer-employee relationship existed between the management and the concerned workmen and Bhalgora Area or Burragarh colliery never Awarded any contract to Chhotanagpur Motor Paribahan Sahayog Samity Ltd., Kusunda at any time on the job of shale picking or any other job and as such it is absurd to suggest that the concerned workmen were under Chhotanagpur Motor Paribahan Sahayog Samity Ltd. as the job of Shale Picking for management of Burragarh Colliery. The sponsoring union had not been recognised by the management and as such union had no right to raise any Industrial Dispute in respect of strangers claiming them to be the workmen of the aforesaid Samity. After awarding a contract to society, work order were issued in its favour and the society used to execute the works according to the terms of the work order and used to submit the bills which was paid through cheques to the society. If the concerned society worked at Burragarh Colliery or Bhalgora Project area they should produce the work orders allotted to it along with the Bank Pass Book indicating the receipt of cheques from the management. In absence of any authenticated documents, the claim of the concerned workmen demanding their regularisation has no basis at all and is liable to be summarily rejected, so the concerned workmen are not entitled to any relief in this matter.

Subsequently the workmen have filed rejoinder to the Written Statement of the management denying averments made in the Written Statement of the management.

6. On the prayer of the workmen the BCCL HQ., Kustore Colliery and the Kusunda Area management have been made party in this case vide order dated 20/10/2005.

The BCCL HQ. and Kustore Colliery have not filed their written statement. However, Kusunda Area has filed its written statement.

7. The case, as per Written Statement, of Management of Kusudna Area is as follows:-

The work order for transportation of coal from Kusunda Open Cast Project to Burragarh Siding and re-loading into Railway wagons as per wagon supplied by Railways was issued by then General Manager, Kusunda Area Vide Order No. A6/GM(PS)117/3052 dated 17/10/1988 with the terms and conditions stipulated therein and the schedule of work clearly mentioned in the work order for the period from 01/08/1988 for two years i.e. up to 31/07/1990.

The work order was very specific and for the following jobs/work to be undertaken by the Chhotanagpur Motor Paribahan Sahayog Samity Ltd., Station Road, Kusunda:-

I) Transportation from KOCP to Burragarh Siding.

II) Loading of trucks by contractor's pay loader at KOCP.

III) Picking and segeration of all stones/shale and extraneous materials at KOCP before loading coal into the trucks.

IV) Breaking of all over sise coal larger than 300 mm before loading into trucks.

V) Providing security for coal stock at Burragarh siding for loaded wagon between Burragarh siding and Bhojudih Washery, supervision at Bhojudih High Bridge and shunting of wagons at Burragarh siding.

VI) Reloading of coal by contractor's Pay-loader into Railway wagon, levelling the loaded coal into the wagon in a manner as acceptable to the Railways after properly placing wagons in the siding.

There was no employer-employee relationship with the concerned workmen –vis-a-vis in relation to the management of Kusunda Area and the concerned persons were neither engaged/employed/deployed for any work directly. The work order was very clearly stipulated about the assignments to the aforesaid M/s. Chhotanagpur Motor Paribahan Sahayog Samity Ltd. along with prescribed rate for different jobs duly approved by the management of BCCL. The management of Kusunda Area/KOCP did not engage/deploy any person for the aforesaid jobs rather it was transporter, which was purely a contractor and had performed the job by engaging their own workmen, and they had made their records/register and payment etc directly to the persons concerned. The name of concerned persons did not exist anywhere in Form 'B', I.D. Card as they were never engaged/deployed by the management at any point of time during the tenure of the contractual job from 01/08/1988 to 31/07/1990. The transporter had raised bills from time to time as per the work performed as per approved rate and time to time and the same was being passed for payment. The claim of the union that the workmen namely Gorelal Paswan and 32 others were working as Shale Picker since 1988 at Burragarh siding under Chhotanagpur Motor Paribahan Sahayog Samity Ltd., Kusunda is not related with the management of Kusunda Area and also at Kusunda Open Cast Project as the management had not engaged them at any point of time, so the concerned workmen are not entitled to get any relief in this case.

8. The concerned workmen have filed rejoinder to the Written Statement of management of Kusunda Area denying all the averments mentioned in the Written Statement but have admitted in Para-4 of rejoinder that the statement is made in Para-3 (Para-3 has been written twice by mistake) is matter of record and it is substantially correct.

9. The workmen have examined only one witness. He is WW-1 Gorelal Paswan and workmen have proved following documents which are marked as-

(i) Ext. W-1- Certified copy of order sheet of M.P. case no 402/1992 1, passed by S.D.M, Dhanbad.

(ii) Ext. W-2- Letter of representation addressed to the Officer incharge of Burragarh, TPS by concerned workmen.

(iii) Ext. W-3 & W-3/1- Photocopy of attendance showing attendances of some workers on loose sheets on which it is mentioned as register of persons in below ground working under signature of Ali Hussain siding supervisor.

(iv) Ext. W/4- Carbon Copy of Loose sheets showing attendance of some workers as used to be marked by Munshi of Co-operative Society.

10. The management has examined two witnesses. They are MW-1 R.K. Sinha and MW-2 P.K. Sinha. The management has not proved any documents in support of its case.

11. The WW-1 Gorelal Paswan has deposed before the tribunal that he has been deposing on behalf of all concerned workmen whose case has been referred to this tribunal. He has further deposed that he along with other workmen were working at Burragarh Railway siding of BCCL since 02/08/1988, as shale picker and the said work was perennial in nature. He has also deposed that he used to pick shale and stones daily and work was taken by Labour Officer Shri Shukla, Siding Supervisor Shri Kishto Benerjee, Siding Manager, Shri B.N. Saha and Siding Inspectors Ali Hussain and Ramchandar Chauhan who were employees of BCCL. He has further deposed that their attendance was being marked by Ali Hussain and Ramchander Chauhan and as such they were working under the official of BCCL but their wages were being paid through contractor which was the cooperative society run in the name and style at Chhotanagpur Motor Paribahan Sahyog Samiti Ltd. He has further stated that their work was not being supervised by said Samiti but they were working directly under the control of the BCCL and there was an agitation for payment of wages for which a case under section 107 of Cr.P.C was initiated in which he and other workers appeared before S.D.M, Dhanbad. He has also deposed that coal was transported from KOCP, Bhalgora Area and Hurralidih Area to Burragarh railway siding and coal was loaded into Railway wagons through machines. He has also stated that he and other workers used to pick up shales and stones from the coal. He has proved copy of carbon copy of representation filed him and other workers before Burragarh T.O.P which is marked as Exhibit-2, Xerox copy of attendance under signature of Ali Hussain, siding

supervisor which is marked as Exhibit-3 series, copy of attendance register used to be marked of Munshi of the cooperative society which is marked as Exhibit-4.

In the cross-examination he has deposed that company has not given them any appointment letter, Identity card and Pay slip for working at Burragarh Railway siding. He has also deposed that the contractor must have got work order and without any work order no contractor would perform any job. He has further deposed that they had been informed by the contractor and cooperative society that it had received work order for job. He has further stated that the work order had not been issued to the worker so, he could not file the same. He has also deposed that they were not the members of the cooperative society and they had not got any receipt of the membership. He has further stated that he had full knowledge that workers cooperative society was formed for getting work from the BCCL and the members of the society were allowed to work in the said job. He has further stated that the secretary of the society had given them appointment letter which are with them and he has not filed any such appointment letter. He has further deposed that he has no knowledge whether the payment made to the cooperative society was made by cheque through bank and he couln't say the name of the bank in which the society had kept its account. He has also stated that he had not received any letter from BCCL in support of their working at Burragarh Colliery. He has denied the suggestions that all the documents filed by them are false and fabricated. He has also stated that he and other workmen were appointed as Shale Picker by cooperative society and the society had engaged them at Burragarh Siding. He has also stated that it is not a fact that the proceeding u/s 107 was initiated only for the purpose of creating documentary evidence in this case. He has also stated that he had no knowledge that manufactured award was submitted to the management regarding regularization in the light of award passed by CGIT No.2, Dhanbad. He has also denied the suggestions that Ali Hussain didn't mark their attendance and didn't supervise their work.

12. The MW-1 R.K. Sinha has deposed before tribunal that at present he has been working as Manager at Shimlabahal Colliery but he was posted at Burragarh Colliery Area as manager from March 1990 to August and at that time the concerned workers were neither engaged as Shale Picker nor they had been given any job. He has also deposed that during that period no contractor was engaged and Chhotanagpur Motor Paribahan Sahayog Samity Ltd was not engaged for doing the job of Shale Picking.

In the cross-examination he has deposed that there was a Railway Siding at Burragarh Colliery and at that Railway Siding besides Burragarh Railway Colliery, other Collieries used to dump coal for transportation by Railway. He has also stated that the engagement of workmen and machines were done at the loading side by the area management and at that time it was within the Bhalgora area. He has also stated that at the time the coal from underground mines were used to be transported from coal siding, so there was no question of coal containing any shale or foreign material. He also deposed that it was the Project Officer who used to look after dispatch of coal and he had not got detail knowledge of Railway Siding at Burragarh, so he couldn't say as to who were actually working at that Railway Siding.

13. The MW-2 P.K. Sinha has deposed that he was posted as Agent of Burragarh Colliery of M/s E.C. Ltd. from January 90 to March 91, and at that time he had not granted any contract to Chhotanagpur Motor Paribahan Sahayog Samiti Ltd, Kusunda for performing any job. He has also deposed that it is not correct that the concerned workmen were engaged by him.

In the cross-examination he has deposed that he couldn't say whether the establishment under which he was working was registered under the Contract Labour (Regulations and Abolition) Act or not. He has also stated that the work relating to coal loading, seperation of shale from coal, dumping of coal were used to be under the charge of management. He has also stated that coal raised from the mines was used to be transported to the railway siding, by the management. He has also deposed he couldn't say how many contractor were working during the relevant period in the said establishment.

14. The learned lawyer appearing on behalf of the workmen has submitted that the concerned workmen had been working as a Shale Picker and as per wage board recommendation Shale Picker has been catogarised as Category-1 Mazdoor but the workmen had not been regularised by the BCCL. He has also submitted that the concerned workmen were working under the direct control and supervision of the management, so the employment of concerned workmen through Chhotanagpur Motor Paribahan Sahayog Samiti Ltd is camouflage. He has also argued that the evidence of MW-1 and MW-2 are contradictory with respect to the written statement filed by the Kusunda Area. He has relied on the decision as reported in LLJ Volume-1 1962 page 131(SC), 1963(2) LLJ-page 447 (SC), LLJ Volume-2 1964 page 633, 1978 Labour ICP-1264 SCLJ, Volume-15 page 101(SC), Volume-60 page 20 (SC), LLR 1994 page 634 (SC), 2002(2) LLNP 638 (SC), 2000 (87) FLR-P7, 2003(38) FLR-(38), FLR 2008 A/R (SC), 2001 LLRP1079 (SC).

He has also submitted that in all the above cases it has been decided that the workmen discharging work under the contractor were actually the workers of the management. He has lastly submitted in the light of the decision as referred above the concerned workmen may be regularised and the award may be passed in their favour.

15. On the other hand the learned lawyer of management has argued that the concerned workmen were never employed by the management of BCCL and there was no employee-employer relationship between them.

He has also argued that the workmen were engaged by Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. for transporting coal, shale picking on work order of the BCCL so they are not employed by the management and they are not employees of the management, so there is no question of regularization of their services.

He has relied on the decision as reported him 2011, 1 SCC 635 (2005) 5, SCC 100 (2013) 4 JCR 115 JHAR 2014 (4), JCR 477 (JHAR) 2015 (4) SCC 71.

16. Now the only point of consideration in this reference case is whether the concerned workmen were working at Burragarh Siding as Shale Picker since 1988 under Chhotanagpur Motor Paribahan Sahayog Samiti Ltd and if so, whether the demand of union for their regularisation by the management of the Bhalgora Area of M/s. BCCL is justified.

FINDINGS

17. At the outset of discussion it is required to mention here that the out of 33 workmen only one workman namely Gorelal Paswan has been examined as WW-1 on behalf of all the concerned person.

18. W.W.1 Gorelal Paswan in his evidence has categorically deposed that he along with other workmen had been working at Burragarh Railway Siding at BCCL, since 02/08/1988 as a Shale Picker and the said work was of perennial nature. He has also deposed that work of his and other workers were taken by official of BCCL and their attendance were also marked by the official of BCCL but their wages were being paid by the contractor namely Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. He has also stated that he and other workmen were directly working under the control of BCCL and coal was transported from K.O.C.P, Burragarh Colliery, Bhalgora area and Hurralidih Area to Burragarh Railway siding. where the coal were loaded to Railway wagons by machines and they used to pick up shale and stones from coal.

However in the cross-examination he has deposed that the company had not given them any Appointment letter, Identity card and Pay slip for working at Burragarh railway siding but Secretary of the society had given them appointment letter which were with them and they had not filed it. He has further stated that he and other workmen were appointed as shale picker by co-operative society and the society had engaged them at Burragarh siding. He has also deposed that they were not member of co-operative society and they had not got receipt of the membership. He has also stated only member were allowed to work.

19. The MW-1 R.K. Singh has stated in his evidence that the concerned workmen were neither engaged as shale picker nor they had been given any job. He has also stated that Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. was not engaged for doing job of shale picking. He has also deposed that the engagement of workmen and machines were at the loading side by the Area Management and at that time it was within the Bhalgora Area.

20. The MW-2 P.K. Sinha has stated that the work regarding to coal loading separations of shale of coal dumping of coal were used to be under the charge of management. The Kusunda Area has not examined any witness in support of its case,

21. Now the Tribunal will examine the documentary evidences produced by the workmen.

The Ext-W-1 is an order sheet of S.D.M, Dhanbad passed in the proceeding u/s 107 of the Cr.P.C.

After perusal of the order sheet. It appears that a dispute arose between the Bhiro Mahto, Munshi of Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. and the workmen Pagal Tuddu and three others on 16/01/1992 regarding payment of wages of two months.

Further, the Exhibit W-2 is a representation of the concerned workmen submitted to the In-Charge, Burragarh T.P.S. regarding revision of wages and grant of Identity Card. It has been also mentioned that their attendance were not entered in form 'E' register and their attendances were made on a rough paper on each day.

The exhibit W-3 and W-3/1 are photo copies of loose sheets of attendance of one hundred pages on which it is mentioned as register of persons in below ground during week and attendance of workmen have been marked on it but they are of the year of 1991, whereas the work order was for the period 01/08/88 to 31/07/90

The exhibit W-4 series is the carbon copy loose sheets of attendance without any seal or signature of any officer of BCCL or office bears of society but it bears names of few workmen and their signatures. Further some of sheets bear the name of Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. Moreover there loose sheets are of year 1992, much after the expiry of the period of the work order.

22. It is relevant to mention here that in written statement of Burragarh Colliery/Bhalgora Area BCCL they have not mentioned anywhere that Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. was engaged by the BCCL for transporting of coal and allied works but the management of the Kusunda Area in Para-3 of its written statement has stated that the work order for transport of coal for Kusunda open cast project to Burragarh siding and re-loading in to railway wagons as per wagon supply by railways was issued by General Manager Kusunda Area vide order No.A6/GM(PS)117/3052 dated 17/10/1988 with terms and conditions stipulated therein and the schedule of work clearly

mentioned in the work order for the period since 01/08/1988 for two years i.e. up to 31/07/1990. The workmen in Para-4 of rejoinder has admitted that statement made in Para-3 (Para-3 has been written twice by mistake) of written statement is substantially correct.

23. Now, in the light of the admission of the workmen in their rejoinder it is apparent that management of Kusunda Area had issued the work order for transporting coal with terms and conditions as stipulated in the work order for two years i.e. since 01/08/88 to 31/07/19 and there is no evidence that the work order has further been extended.

24. Now, the question arises whether the concerned workmen Gorelal Paswan and 33 others were working under Chhotanagpur Motor Paribahan Sahiyog Samiti Ltd at Burragarh siding since 1988.

In this regard the union/workmen has brought evidence that all the concerned workers had been appointed by Chhotanagpur Motor Paribahan Sahayog Samiti Ltd and appointment letters had been issued to them by Secretary of the Samiti but non of the workers have produced any appointment letter issued by the Secretary of Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. before the Tribunal. Further the Secretary of the Samiti has not been examined by workmen to show that the concerned workmen had been appointed by the Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. Moreover there is also evidence that the concerned workers were not member of Chhotanagpur Motor Paribahan Sahayog Samiti Ltd and only member of society were allowed to work.

The Ext. W-3 and W-3/1 as well as Ext. W-4 series are photocopy or carbon copy of attendances of workers on loose sheets of the year 1991 and 1992 much after the expiry of the period of work order and it does not bear any seal or signature of office bears of society, so no reliance can be placed on them for establishing that the concerned workmen were engaged by the Chhotanagpur Motor Paribahan Sahayog Samiti Ltd., Katras.

It is relevant to mention here that the initial burden to prove that the workmen had been appointed and engaged by the contractor Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. but the workmen had failed to prove that they were appointed and engaged by the contractor Chhotanagpur Motor Paribahan Sahayog Samiti Ltd.

25. In view of above discussions that the concerned workmen Gorelal Paswan and 32 others have not brought on record any piece of reliance evidence to show that they were appointed and engaged by Chhtanagpur Motor Paribahan Sahayog Samiti Ltd., Katras for shale picking since 1988 at Burragarh Siding.

The learned lawyer of the union/workmen has placed reliance on several judgments of Hon'ble Supreme Court and it appears that in those cases the workers were appointed by the contractors.

Here in this matter the union/workmen has completely failed to establish that the concerned workmen were appointed as workers by the contractor Chhotanagpur Motor Paribahan Sahayog Samiti Ltd., so all the judgments relied by the learned lawyer of the union/workmen are not applicable in this matter.

26. The learned lawyer of management has relied on the discussion of Hon'ble Supreme Court passed in General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon vs. Bharat Lala and Another' [2011 (1) SCC 635], in which the Hon'ble Supreme Court has been pleased to hold that the well recognised test to find out whether the contract labourers are direct employee are as follows:-

> "It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant".

It is relevant to mention here that the Hon'ble Supreme Court in International Airport Authority of India Vs. International Air Cargo Workers' Union (SCC p.388, 2009/13, the expression control and supervision has been explained which is as follows:-

> "If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work. and subject to what conditions. Only when the contractor assigns/sends the worker to work under the

principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor".

Further the Hon'ble Supreme Court in 'Balwant Rai Saluja and Another vs. Air India Limited and Others' [2014(9) SCC 407], has been pleased to hold as follows:-

"Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia: (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision i.e. whether there exists complete control and supervision. As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]."

The Hon'ble Supreme Court in recent judgment passed in Civil Appeal No. 1799-1800 of 2019 (Bharat Heavy Electrical Limited Vs. Mahendra Prasad Jakhmola and others has again re-iterated the above principles as laid down by the Hon'ble Supreme Court.

Now in this matter the workmen Gorelal Paswan and 32 others have failed to establish that they were appointed and were working under contractor Chhotanagpur Motor Paribahan Sahayog Samiti Ltd, so they were not contract workers. Hence the Tribunal does not think it proper to discuss the aforesaid judgments in details on this point.

27. In view of above discussions the Tribunal comes to the conclusion that the concerned workmen namely Gorelal Paswan and 32 others (Names mentioned in the schedule of reference) had not been working under Chhotanagpur Motor Paribahan Sahayog Samiti Ltd. at Burragarh siding as shale picker since 1988, so the demand of union/workmen for their regularization by the management of Bhalgora Area of M/s. BCCL is not justified. Further the concerned workmen are not entitled for any other relief.

This is the Award of the Tribunal.

D. K. SINGH, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1978.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 41/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल–20012/365/1998–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1978.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 41/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 07.11.2019.

[No. L-20012/365/1998-IR (C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 41/1999

Employer in relation to the management of Kedla O C P of M/s. CCL.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 23.10.2019

AWARD

By Order No.L-20012/365/1998–IR (C-I) dated 11/03/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the dismissal from service of Sri Magon Munda Time rated Mazdoor with effect from 06/07/1996 by the management of Kedla Open Cast Project of CCL was legal justified? If not, to what relief the workman is entitled to?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter regd. notices were issued to both the parties but even then no one appeared on behalf of the workmen. Case is pending since 23/02/99 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1979.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 94/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल–20012/549/1998–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1979.—In pursuance of Section 17 of the Industrial Dispute, Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 94/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.11.2019.

[No. L-20012/549/1998-IR (C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 94/1999

Employer in relation to the management of Moonidih Project of M/s. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri D. K. Verma, Adv.

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 23.10 .2019

AWARD

By Order No. L-20012/549/1998-(C-1) dated 17/05/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

''Whether the action of the management of M/S BCCL in not reinstating Shri Aghnu Ravidas after his acquittal in GR case No. 2102/85 legal and justified? If not what relief the concerned workman is entitled and from what date?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workman left appearing before the Tribunal. Thereafter regd. notices were issued to the workmen but even then no one appeared on behalf of the workmen. Case is pending since 15/06/99 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate. .

D. K. SINGH, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1980.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 190/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल–20012/60/2000–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1980 .—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 190/2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.11.2019.

[No. L-20012/60/2000-IR (C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 190/2000

Employer in relation to the management of P.B. Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 25.10.2019

AWARD

By Order No.L-20012/60/2000-(C-I) dated 29/06/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the refusal of the management to regularise Sri B.K. Mahto as Compounder is proper and justified? If not, to what relief is the workman entitled and from what date."

2. After receipt of the reference, both parties were noticed and both parties never appeared before this Tribunal,. Thereafter again a regd. notice was issued to the parties and one the notices returned with endorsement "Addressee not found" Case is pending since 02/08/2000 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1981.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एयर इंडिया सेटस एअरपोर्ट सर्विस प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 13/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.11.2019 को प्राप्त हुआ था।

[सं. एल–20013/02/2019–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1981.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi (Ref. No. 13/2017) as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of M/s. Air India SATS Airport Services Pvt. Ltd., and their workmen, which was received by the Central Government on 05.11.2019.

[No. L-20013/02/2019-IR (C-I)]

S. C. RAY, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO. 1 NEW DELHI

Present : Ms.Pranita Mohanty, Presiding Officer

ID No.13/2017

Between

Shri Kapoor Singh S/o Shri Risal Singh,
House No.3327/64A,
Anand Nagar, Rewari,
Haryana …Workman

Versus

The Management of Air India Sats Airport Services Pvt. Ltd.,
A-63, IGI Airport Road, NH-08,
Mahipalpur,
New Delhi 110 037 …Management

AWARD

Present dispute has been raised by Shri Kapoor Singh(in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. Claim statement has been filed by the workman with the averments that he was working with Air India Sats Airport Services Pvt. Ltd. (in short the management) for the last many years. On 09.03.2015, the workman was placed

under suspension. Charge sheet was served, departmental enquiry was conducted and the workman was let off with a stern warning. Thereafter, the management prevented the workman from joining duties by not issuing him entry pass. The workman has served a demand notice dated 30.11.2015 to the management calling upon them to reinstate him in service with continuity of service, full back wages and all other consequential benefits. However the management did not reinstate the workman. Juniors to the workman are still in employment of the management. No notice or notice pay in lieu thereof was paid to the workman before terminating him. The workman has further averred that he is unemployed since the date of his termination and despite his best efforts, he could not get an alternative employment. Thus, the action of the management in terminating the services of the workman is alleged to be arbitrary, unjustified, illegal and malafide. Finally a prayer has been made for declaring the termination of the workman to be illegal and unjustified and to direct the management to reinstate him in service with continuity of service, full back wages and all consequential benefits.

2. Thereafter the case was posted for filing of written statement by the management. However, despite service of notice/granting of several opportunities, none appeared on behalf of the management, hence the management was proceeded ex-parte on 17.01.2019. Perusal of the record also shows that subsequent to filing of claim statement on 01.06.2017, none put in appearance on behalf of the workman as well. Thus, it is apparent that the workman is no more interested in pursuing his case on merits. Under such circumstances, this Tribunal is left with no other alternative but to pass a 'No claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, the workman is still at liberty to agitate his cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

August 20, 2019

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1982.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 102/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल—20012/59/1999—आईआर (सी—I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1982.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 102/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.11.2019.

[No. L-20012/59/1999-IR (C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 102/1999

Employer in relation to the management of P.B. Area of M/s. BCCL.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 22.10.2019

AWARD

By Order No. L-20012/59/1999–IR (C-I) dated 04/06/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Kenduadih Colliery of M/s. BCCL in not regularizing Sri Uttam Chakrborty as Magazine Clerk from 1985 is justified? If not, to what relief the concerned workman is entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter regd. notices were issued to both the parties but even then no one appeared on behalf of the workmen. Case is pending since 15/06/99 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2019

का.आ.1983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 104/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल–20012/73/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 13th November, 2019

S.O.1983.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 104/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.11.2019.

[No. L-20012/73/1999-IR (C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference No. 104/1999

Employer in relation to the management of Jeenagora Colliery of M/s. BCCL.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 24.10.2019

AWARD

By Order No.L-20012/73/1999–IR (C-I) dated 04/06/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Jeengora Colliery of M/s. BCCL in stopping the facility of 30 days E.L. without complying with the mandatory provisions of Section 9A of the I.D. Act, 1947 is justified? If not to what relief the concerned workman is entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter regd. notices were issued to both the parties but even then no one appeared on behalf of the workmen. Case is pending since 15/06/1999 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

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